

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-1203

In The  
**United States Court of Appeals**  
For The Second Circuit

---

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*-against-*

PETER DALY,

*Defendant-Appellant.*

*On Appeal from the United States District Court for the  
Southern District of New York.*

---

## APPENDIX FOR DEFENDANT-APPELLANT

---

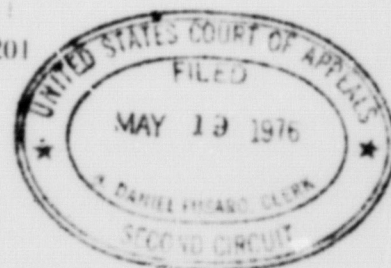
IRA LEITEL

*Attorney for Defendant-Appellant*

188 Montague Street

Brooklyn, New York 11201

(212) 596-1600



(201) 257-6850

LEITZ APPELLATE PRINTERS, INC.

Law and Financial Printing

South River, N.J.

(201) 257-6850

New York, N.Y.

(212) 563-2171

Philadelphia, Pa.

(215) 563-5587

Washington, D.C.

(202) 783-7218

PAGINATION AS IN ORIGINAL COPY



## TABLE OF CONTENTS

	Page
Exhibit Entries . . . . .	1a
Indictment (Filed March 8, 1974) . . . . .	11a
Judgment and Probation/Commitment Order (Filed August 22, 1975) . . . . .	25a
Report of J. Quins, Northwestern Health Board Dated April 30, 1974 . . . . .	27a
Report of Dr. Maxwell J. Carter, London, Dated March 30, 1975 . . . . .	29a
Transcript of Proceedings Before Hon. Inzer B. Wyatt Dated May 13, 1975 . . . . .	35a-1
Transcript of Proceedings Before Hon. Inzer B. Wyatt Dated May 27, 1975 . . . . .	36a

## WITNESSES

Aguiluz:	
Direct . . . . .	44a
Cross . . . . .	76a
Ramos:	
Direct . . . . .	86a
Boutureira:	
Direct . . . . .	89a
Cross . . . . .	93a

Contents

	Page
Kid:	
Direct . . . . .	102a
Cross . . . . .	104a
Atkins:	
Direct . . . . .	110a
Daly:	
Direct . . . . .	118a



# DOCKET ENTRIES

D.C. Form No. 100

CRIMINAL DOCKET

JUDGE WYATT

74 CRIM. 229

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U.S.:

vs.

Rudolph W. Giuliani, AUSA

JOSEPH NOVOA -- all cts.

264-6139

PETER DALY -- all cts.

FRANK RAMOS--4, 6-10

DEMETRIOS PAPADAKIS --4, 6, 7, a/k/a Jimmy Pappas, a/k/a  
"Jimmy the Greek"

JOAQUIN NIEVES -- 4, 8.

ELISSA POSSAS -- 4, 6, 7.

ABSTRACT OF COSTS

DATE

NAME

REC.

DISBURSED

(07)

Fine, #2-Reopened 5-13-75  
Clerk, JS 3- 5-4-  
Marshal, 3 - ( 6 clst) 1

7/2/74

7/9/74

Wallach  
Spear

5.

5.

18:371,21173,4 Consp. to  
viol. Fed.Narcotic Laws. (Cts. 1&4)  
18:3,21173,4 Accessory to the fact. (Ct. 2)  
18:1510 Obstruction of crim. invest. (Ct.3)  
21:173.4 Unlaw. sale, receive & conceal  
of Heroin & Cocaine.

(Ten Counts)

DATE	PROCEEDINGS
3-8-74	Filed indictment. B/Ws" ordered. Pollack J. B/Ws issued.
3-12-74	Deft. Novoa (present) Matter adj'd to 3-25-74 at 10 AM. Bail set at \$10,000. P.R.B. unsecured Pollack, J.
3-12-74	Filed copy of P.R.B. bond unsecured in the amt. (\$10,000.) acknowledged by Clerk on 3/12/74.
3-18-74	J. Novoa (atty. present). Pleads not guilty. Bail fixed at \$25,000. P.R.B. secured by \$2,500. cash. Defts. Possas (No appearance by defts. Court directs entry of not guilty. Daly) Case assigned to Judge Wyatt for all purposes. Motions Papadakis and Ramos. (ref. in 10 days. Motley, J.)
3-18-74	JOSEPH NOVOA - Filed notice of appearance of James L.R. Costello 170 B'way, N.Y.C. 10038 BA 7-4233
3-21-74	FRANK RAMOS- Filed notice of appearance of Rubin, Gold & Geller 299 B'way, N.Y.C. 233-3330
3-22-74	JOAQUIN NIEVES - Filed remand ---March 12, 1974 Deft. released from the custody of the U.S. Marshal. Bond posted as directed by Court.
3-29-74	Pre-trial conference held. Trial May 13, 1974. Motion by April 12, 1974 --Wyatt, J.
4-1-74	JOAQUIN NIEVES-(atty Robert Schwartz present) Court enters plea of not guilty.---Wyatt, J.
4-1-74	DEMETRIOS PAPADAKIS- Filed Affdvt for Writ of Habeas Corpus via Joseph Jaffe US Atty, Writ issued-Ret 4-3-74.
4-3-74	JOAQUIN NIEVES- Filed notice of appearance of ROBERT B. SCHWARTZ c/o A.J. Krieger, 401 Bway, NYC Tel#925-5937.
4-3-74	DEMETRIOS PAPADAKIS- Deft present, produced in court on Writ. Joseph I. Stone assigned as Atty. C.I.A. Writ. adj. to 5-13-74, Deft. pleads "NOT GUILTY"--- WYATT, J.



DATE	PROCEEDINGS
4-8-74	DEMETRIOS PAPADAKIS-Filed Deft's CJA Form #23-- Financial Affidavit.
4-8-74	DEMETRIOS PAPADAKIS- Filed CJA 20, Copy #5, appointing Joseph I. Stove, 277 Broadway, NYC 10007 Tel #RE2-2270.
4-17-74	JOAQUIN NIEVES- Filed Deft's Notice of Motion and Affidavits requesting the dismissal of the indictment.
4-18-74	JOSEPH NOVOA- Filed Deft's Demand for a Bill of Particulars.
4-22-74	JOSEPH NOVOA- Filed Deft's Memorandum of Law.
4-12-74	JOSEPH NOVOA- Filed Defts's Notice of Motion to con- solidate support papers ret. 4/28/74.
4-24-74	JOAQUIN NIEVES- Hearing held as to Deft. Nieves atty present with interpreter Norma Seltzer, Wyatt J.
4-25-74	JOAQUIN NIEVES_ Filed Memo. End. on motion dated 4/17/74. Motion denied. - So ordered Wyatt, J. (mailed notice)
4-26-74	JOSEPH NOVOA- Filed Pltff's Affdvt of Michael B. Mukasey in response to Deft various pre-trial motions, such as Bill of Particulars, pre-trial discovery, etc.
4-26-74	JOSEPH NOVOA- Filed Pltff's Memorandum of Law in opposition to Defts motion for Bill of Particulars, Discovery & Inspect. etc.
4-29-74	JOSEPH NOVOA- Filed Memo. End. on motion dated 4/22/74. Motion in all respects denied. Wyatt J. (mailed notice)
5-6-74	JOAQUIN NIEVES- Filed Notice of Motion. Re: Dismiss Indictment. ret. Sine Dic.
5-6-74	JOAQUIN NIEVES & FRANK RAMOS- Filed the following papers rec's from Magistrate Raby (Mag.#74-328) Docket Sheets Entry, Warrant issued 3-8-74, Disposition Sheet, Notice of Appearance, (2) Appearance Bond (F.Ramos) (1) \$10,000.00 PRB without security, co-signed by wife on 3/13/74. Final Commitment (J. Nieves) (1).



DATE	PROCEEDINGS
5-10-74	Filed Affidavit by Lawrence S. Feld U.S. Atty, in opposition to motions served 5/6/74 by deft. Joaquin Nieves.
5-10-74	JOAQUIN NIEVES- Filed Memo. End. on motion dated 5/6/74. Motion is denied in all respects except that the 1955 conviction will be excluded if deft. testifies. Wyatt J. (mailed notice)
5-13-74	Filed Pltffs. Affidavit that writ of habeas corpus be issued to Nicholas Lamattina at Federal Prison Camp, Eglin Air Force Base, writ issued Ret. 5/14/74.
5-13-74	Filed Pltffs Affidavit that writ of habeas corpus be issued to Nicholas De Stefano at Federal Prison Camp, Eglin Air Force Base. Writ Issued Ret. 5/14/74.
5-13-74	JOSEPH NOVA- Filed Order that the will show that counsel did not appear for motion & deft. was in no way at fault. Wyatt J. (mailed notice)
5-14-74	Filed Pltffs. Notice of Motion for an order adjourning the trial until 9/3/74 or 5/20/74 etc. & Affidavit in support.
5-15-74	JOSEPH NOVOA, ET AL.- Trial begun as to defts. Joseph Novoa, Demetrios Papadakis, & Joaquin Nieves (Inte preter-Italian S. Bastianello) (Attys. Present) with a jury. Bail of Deft. Novoa reduced to \$25,000 P.R.B. (no cash).
5-16-74	Trial cont'd.
5-17-74	Trial cont'd.
5-20-74	Trial cont'd.
5-21-74	Trial cont'd.
5-22-74	Trial cont'd. Gov't. rests- NOVA & PAPADAKIS defts. move to dismiss Count 4. Decision Reserved.
5-23-74	Trial cont'd.

## DATE

## PROCEEDINGS

- 5-31-74 NICHOLAS LAMATTINA- Filed Writ of Habeas Corpus directed to Warden-Federal Prison Camp Eglin Air Force Base, Fla. Writ Satisfied. Cannella J. 5/23/74.
- 5-31-74 NICHOLAS De STEFANO- Filed Writ of Habeas Corpus directed to Warden-Federal Prison Camp Eglin Air Force Base, Fla. Writ Satisfied 5/23/74.
- 5-24-74 Trial cont'd. Defts NOVA & PAPADAKIS rest, Gov't motion to sever Counts 2 & 3 as to deft NOVA-"GRANTED".  
Deft's NIEVES and PAPADAKIS motion to DISMISS count 4- "GRANTED"
- 5-28-74 Trial cont'd. Deft. NIEVES rest. All sides rest.  
Summations.
- 5-29-74 Trial cont'd. Court charges the jury. Jury deliberating.
- 5-30-74 Jury deliberations cont'd. Partial Verdict.  
Deft. NOVOA, GUILTY on Count #1.  
Deft. PAPADAKIS, NOT GUILTY on Count #6.  
Deft. NIEVES, NOT GUILTY on Count #8.,  
discharged.
- 5-31-74 Jury deliberations cont'd.
- 6-3-74 Jury deliberations cont'd. Deft. PAPADAKIS, GUILTY on Count #7. Sentence June 14, 1974 at 2:30 PM- Pre-Sentence Investigation ordered.  
Deft. NOVOA, GUILTY on each of Counts #4, 5, 6, 7, 8, 9 & 10. -- Court to fix sentence date on June 5, 1974 at 10:00 A.M. --WYATT, J.
- 6-5-74 JOSEPH NOVA- Deft. sentence July 2, 1974 at 10:00 AM Room 102. Deft. continued on present Bail until 5:00 PM today to make Bail in the amount of \$50,000, P.R.B. Signed by Deft; Deft's Wife, Deft's Mother & Deft's Brothers, & Deft's Mother-in-Law. SECURED BY THE DEED OF THE DEFT'S HOUSE. Condition of Bail that the Deft. SIGN in ROOM 345 at 6:30 PM on TUESDAYS and THURSDAYS of every week -- WYATT, J.
- 6-5-74 JOSEPH NOVOA- Filed unsecured P.R.B. in the amount of \$50,000 acknowledged by Clerk.



DATE	PROCEEDINGS
6-10-74	Filed Transcript of record of proceeding of May 15, 16, 17, 20, 1974.
6-10-74	Filed Transcript of record of proceedings of May 21, 22, 23, 24, 28, 1974.
6-10-74	Filed Transcript of record of proceedings of May 29, 30, 31, 1974 & June 3, 1974.
5-31-74	DEMETRIOS PAPADAKIS- Filed CJA 21 appointing Court Reporters-Wyatt, J. 5-21-74.
6-14-74	DEMETRIOS PAPADAKIS- Filed JUDGMENT and COMMITMENT (atty. present) Deft. is committed to the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS, to run concurrently with sentences now being served under indictments 71cr. 614 and 71 cr. 972 ....WYATT, J. Issued Commitment 6-17-74.
6-14-74	DEMETRIOS PAPADAKIS- Filed notice of appeal from Judgment dated 6-14-74. Mailed copies to deft. at Federal House of Detention & U.S. Atty.
6-18-74	DEMETRIOS PAPADAKIS- Filed writ of habeas corpus with Marshal's return-6-14-74 Writ Satisfied--Knapp, J.
6-20-74	DEMETRIOS PAPADAKIS- Filed Commitment & entered return Deft. delivered to Warden, Federal detention Headquarters, 427 West Street, N.Y.C. on June 14, 1974.
7-2-74	JOSEPH NOVOA- Filed JUDGMENT and COMMITMENT (atty present). It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS on count 1. TEN (10) YEARS on each of counts 4 thru 10, to run concurrently with each other. Sentence imposed on count 1, to run concurrently with sentence imposed on counts 4 thru 10 ....Wyatt J.
7-2-74	JOSEPH NOVOA- Deft. remanded ...Wyatt, J.
7-2-74	JOSEPH NOVOA- Filed Deft's. consent to change attorney. So Ordered ....Wyatt, J.

DATE	PROCEEDINGS
7-2-74	JOSEPH NOVOA- Filed Notice of Appeal from the Judgment of Conviction as entered on July 2, 1974. (Mailed Notice to Joseph Novoa, 1738 East 33rd Street, Brooklyn, New York and U S. Attorney.)
7-9-74	Filed commitment & entered return Deft. delivered to Warden, Federal Detention Headquarters, 427 West Street, N.Y.C. on 7-2-74.
7-16-74	JOSEPH NOVOA- Filed notice- The record on appeal has this day been certified and transmitted to the U.S.C.A. 2nd Circuit.
7-24-74	DEMETRIOS PAPADAKIS- Filed CJA 20 copy 2 approving payment for J.I. Stone dtd. 4-5-74--Wyatt, J.
8-19-74	DEMETRIOS PAPADAKIS- Filed transcript of record of proceedings dated 6-14-74.
10-8-74	FRANK RAMOS- Filed nolle prosequi .....Wyatt, J.
11-29-74	PETER DALY- <div style="margin-left: 100px;">Closed statistically because  <div style="margin-left: 20px;">(X) defendant ) is  ( ) co-defendant ) a  ( ) witness ) fugitive.  In all other respects this case  is still pending.</div> </div>
11-29-74	ELISSA POSSAS- <div style="margin-left: 100px;">Closed statistically because  <div style="margin-left: 20px;">(X) defendant ) is  ( ) co-defendant ) a  ( ) witness ) fugitive.  In all other respects this case  is still pending.</div> </div>
3-8-74	PETER DALY- Bench Warrant Issued.
12-31-74	PETER P. DALY- Filed Govt's. affidavit of Rudolph W. Giuliani.
12-31-74	PETER P. DALY- Filed Govt's. affidavit of Carl R. Aguiluz.



DATE	PROCEEDINGS
12-31-74	PETER P. DALY- Filed warrant for arrest of deft.
1-21-75	PETER P. DALY- Filed Govt's. supplemental affidavit by Rudolph W. Giuliani.
2-5-75	DEMETRIOS PAPADAKIS & JOSEPH NOVOA- Filed true copy of U.S.C.A. mandate with opinion attached. The judgment of the district Court is affirmed. Judgment Entered 2-5-75- Clerk. (mailed notice)
2-5-75	JOSEPH NOVOA- Filed letter addressed to Judge Wyatt from U.S. Attorney's Office dated 1-31-75, with MEMO ENDORSED. The above letter is a dismissal by the U.S. Attorney of counts 2 & 3 of indictment 74 Cr. 229 as against deft. Novoa. Fed. R.Crim.P. 48(a). Leave of Court is hereby granted for the filing of a dismissal of these counts as against deft. Novoa. It is noted that these counts 2 & 3 are not dismissed as against deft. Daly but continue as charges against Daly. SO ORDERED .....Wyatt, J.
2-21-75	PETER P. DALY- Filed affidavit of Carl Aguiluz, a witness in the trial.
2-21-75	PETER P. DALY- Filed affidavit of Salvatore Boutureira, a witness in the trial.
2-25-75	Filed transcript of record of proceedings dated 3-18-74.
2-21-75	PETER P. DALY- Filed affidavit of Gene L. Ferrar, a witness in the trial.
3-13-75	PETER P. DALY- Filed Govt's. affidavit, re: sentences imposed on witnesses Salvatore Boutureira & Carl Aguiluz.
4-25-75	JOSEPH NOVOA- Filed deft's. affidavit & notice of motion for reduction of sentence, ret. 5-2-75.
4-28-75	JOSEPH NOVOA- Filed Govt's. affidavit in opposition to deft's. motion for reduction of sentence.
5-5-75	JOSEPH NOVOA- Filed MEMO ENDORSED on deft's. motion for reduction of sentence, filed 4-25-75. This motion was called in open Court. After careful consideration of the papers the motion is denied ....Wyatt, J.(mailed notice)

DATE	PROCEEDINGS
5-13-75	Deft. Peter Daly (Jtty present John B. Schofield, Esq.) Court enters a plea of not guilty. Bail fixed in the amount of \$100,000 cash or surety bond. Deft. remanded in lieu of bail. Trial June 2, 1975 .....Wyatt, J.
5-12-75	DEMETRIOS PAPADAKIS- Filed true copy of U.S. Supreme Court mandate. The petition for a writ of certiorari is denied. (mailed notice)
5-27-75	PETER DALY- Filed Warrant for Arrest with marshal's return. Bail fixed in the amount of \$100,000 cash or surety bond. Remanded in lieu of bail. 5-13-75...Wyatt, J.
5-27-75	Pre-trial conference held .....Wyatt, J.
5-28-75	PETER P. DALY- Filed notice of appearance of John P. Schofield, 299 B'way, N.Y.C., 732-5166, as attorney for deft.
5-28-75	PETER DALY- Filed Govt's. affidavit for a writ of habeas directed to Warden. Federal Correctional Facility. Lewisburg, Pennsylvania. Writ issued, ret. 6-2-75.
6-9-75	PETER DALY- Filed Govt's. memorandum with respect to proof of deft's. similar criminal acts.
6-2-75	Trial begun, as to deft. Peter Daly as to counts 5, 6, 7 & 8 only (attorneys present) with a jury.
6-3-75	Trial continued.
6-4-75	Trial continued.
6-5-75	Trial continued.
6-6-75	Trial continued. Both sides rest. Summations.
6-9-75	Trial continued. Court charges the jury. Jury finds the deft. Peter Daly guilty on each of counts 5, 6, 7 & 8. Sentence 8-22-75. Pre-sentence investigation ordered. Deft. remanded, no bail .....Wyatt, J.



DATE	PROCEEDINGS
6-20-75	Filed STIP. & ORDER extending deft's. time to move to vacate the verdict until 7-18-75 .....Wyatt, J.
7-22-75	Filed transcript of record of proceedings dated 5-13-75.
7-22-75	Filed transcript of record of proceedings dated 5-27-75.
7-17-75	PETER DALY- Filed deft's. motion for a new trial.
7-25-75	JOSEPH NOVOA- Filed writ of habeas corpus directed to Warden, Federal Correctional Facility, Lewisburg, Pa. with marshal's return. Writ returned without further execution. Inmate returned to Lewisburg on 7-18-75.
8-25-75	PETER DALY- Filed Govt's. affidavit in opposition to deft's. motion for a new trial.
8-25-75	PETER DALY- Filed MEMO ENDORSED on deft's. motion for a new trial. Motion denied.....Wyatt, J. (mailed notice)
8-22-75	PETER DALY- Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TEN (10) YEARS, on each of counts 5, 6, 7, 8 to run concurrently with each other. Counts 1, 2, 3, 4, 9, 10 are dismissed by the Court. Deft. ordered to pay the costs of prosecution. The court orders commitment to the custody of the Attorney General and directs that deft. be given credit for such time that he was in custody in England....Wyatt, J. Issued commitment 8-26-75.
8-28-75	PETER DALY- Filed deft's. notice of appeal from the judgment entered on 8-22-75. (Copies mailed to Peter Daly, Metropolitan Correctional Center, 150 Park Row, N.Y.C. and U.S. Attorney's Office.)

RAYMOND F. BURGHARDT, Clerk

s/ A. E. THOMPSON  
Deputy Clerk

INDICTMENT (Filed March 8, 1974)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 CRIM. 229

- - - - -x  
UNITED STATES OF AMERICA

-v-

JOSEPH NOVOA, PETER DALY,  
FRANK RAMOS, DEMETRIOS PAPADAKIS,  
a/k/a "Jimmy Pappas", a/k/a  
"Jimmy the Greek", JOAQUIN NIEVES,  
and ELISSA POSSAS,

Defendants.

- - - - -x

INDICTMENT

74 Cr.

U.S. District Court  
Filed  
Mar 8, 1974  
S.D. of N.Y.

The Grand Jury charges:

INTRODUCTION

1. At all times relevant herein the defendants PETER DALY, and JOSEPH NOVOA, were members of the New York City Police Department, assigned to the Narcotics Bureau, Special Investigation Unit (SIU).

2. The Bureau of Narcotics and Dangerous Drugs, known since July 1, 1973, as the Drug Enforcement Administration, at all times relevant herein was an agency of the United States Department of Justice charged with investigating violations of the criminal laws of the United States relating to narcotics.

3. The Bureau of Customs, at all times relevant herein, was an agency of the United States Treasury Department charged with investigating violations of the criminal laws of the United



States relating to narcotics, passport and visa violations.

4. The illegal importation into the United States of narcotic drugs and the receipt, concealment, purchase and sale, and the facilitation of the transportation, concealment, purchase and sale of narcotic drugs were, at all times relevant herein, crimes under the laws of the United States.

COUNT ONE

The Grand Jury charges:

1. From in or about April 14, 1970 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere JOSEPH NOVOA and PETER DALY, the defendants, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown to defraud the United States and its departments and agencies in connection with the performance of their lawful governmental functions by obstructing and hindering the United States Department of Justice, the Bureau of Narcotics and Dangerous Drugs, and the Bureau of Customs in investigating and prosecuting violations of the narcotics laws of the United States and to violate Sections 173 and 174 of Title 21, United States Code, and Sections 3 and 1510 of Title 18, United States Code.

2. It was a part of said conspiracy that the defendants and their co-conspirators would and did agree to arrest Emilio Diaz Gonzales, a/k/a "Alfred Picardo", Elena Risso a/k/a "Yolando Sarmiento", Jose Luis Mulas and Jorge Rodrigues Araya (hereinafter "the offenders") for unlawful possession of narcotics, and in connection with said arrests, to seize approximately \$1,200 in United States currency, which currency was evidence of violations of the narcotics laws of the United States, and to divide such currency among the defendants and others without reporting said seizure to the New York City Police Department or to Federal law enforcement authorities and to retain possession of approximately five (5) kilograms of heroin and cocaine seized as part of a much larger quantity of contraband narcotics seized from Apartment 4-F, 210 West 19th Street, New York, New York, where said narcotics were being secreted, thereby depriving the United States Government of evidence of violations of the narcotics laws of the United States.

3. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would facilitate the transportation, concealment and sale of quantities of narcotic drugs, after the said narcotic drugs had been imported and brought into the United States, knowing the same to have been imported and brought into the



United States contrary to law.

4. It was further a part of said conspiracy that the defendants and their co-conspirators, knowing that violations of the United States narcotics laws had been committed, would relieve, comfort and assist the offenders in order to hinder and prevent their apprehension, trial and punishment.

5. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would endeavor by means of bribery, misrepresentation, intimidation, force and threats thereof to obstruct, delay and prevent the communication of information relating to violations of the United States narcotics and Immigration laws by other persons to criminal investigators.

6. It was further a part of said conspiracy that the defendants and their co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

#### OVERT ACTS

In furtherance of said conspiracy and in order to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. On or about April 14, 1970 the defendants PETER DALY and JOSEPH NOVVOA, and others, followed the offenders from New York, New York to Fort Lee, New Jersey.
2. On or about April 14, 1970 the defendants PETER DALY and JOSEPH NOVVOA and others, unlawfully caused the offenders to return from Fort Lee, New Jersey to New York, New York.
3. On or about April 14, 1970, the defendants PETER DALY and JOSEPH NOVVOA and others took approximately twelve hundred dollars (\$1200.00) from the offenders while in the Sixth Precinct Station House, New York, New York.
4. On or about April 15, 1970, the defendants PETER DALY and JOSEPH NOVVOA and others conducted a search of Apartment 4-F, 210 West 19th Street.
5. On or about April 15, 1970, the defendants PETER DALY and JOSEPH NOVVOA and others seized a large quantity of narcotic drugs in excess of one-hundred kilograms, the exact kind and nature to the Grand Jury unknown, from Apartment 4-F, 210 West 19th Street, Manhattan.
6. On or about April 15, 1970, the defendant PETER DALY placed a brown valise containing approximately five (5) kilograms of heroin and cocaine in a motor vehicle in the vicinity of 210 West 19th Street, New York, New York.
7. In and around late April or May 1970, the defendant



PETER DALY had conversations with members of the SIU in which he stated he had obtained \$5,000 from the apartment of the aforesaid offender, "Yolando Sarmiento", located in Brooklyn, New York.

8. In and around late April, May and June 1970, the defendants PETER DALY and JOSEPH NOVOA and others had conversations among themselves and with members of the SIU in which they discussed accepting \$150,000 to corruptly dispose of the criminal charges pending against the offenders.

9. In and around May and June 1970, the defendants PETER DALY and JOSEPH NOVOA, and others had conversations in which they agreed among themselves to sell and transfer the aforementioned five kilograms of heroin and cocaine.

10. In or about May, and June 1970, the defendant FRANK RAMOS and others met with the defendants DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS.

11. In and around May and June, 1970 the defendant FRANK RAMOS met with the defendant JOAQUIN NIEVES.

12. During the summer of 1970, the defendants PETER DALY and JOSEPH NOVOA met with others and divided among themselves approximately \$54,000, from the transfer and sale of the approximately five (5) kilograms of heroin and cocaine.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

In or about April, May and June, 1970, in the Southern District of New York and elsewhere, PETER DALY and JOSEPH NOVOA, the defendants, knowing that an offense against the United States had been committed, to wit, a violation of the narcotics laws of the United States, unlawfully, wilfully and knowingly did relieve, comfort and assist the offenders named in Count One and others in order to hinder and prevent said offenders' trial and punishment, in that among other things the defendants deliberately withheld and failed to report and turn in to any authorized law enforcement agency, and instead retained and divided among themselves approximately \$1,200 in United States currency and approximately five (5) kilograms of heroin and cocaine which currency and heroin and cocaine constituted evidence of violations of the narcotics laws of the United States.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Section 3.)

COUNT THREE

The Grand Jury further charges:

In or about April, May and June, 1970, in the Southern District of New York, PETER DALY and JOSEPH NOVOA, the defendants,



and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did endeavor by means of bribery, misrepresentation, intimidation, and force and threats thereof to obstruct, delay and prevent the communication of information relating to violations of Sections 173 and 174 of Title 21, United States Code, to criminal investigators in that, among other things, the defendants deliberately withheld and failed to turn in to any authorized law enforcement agency, and instead retained and divided among themselves approximately \$1,200 in United States currency and sold approximately five (5) kilograms of heroin and cocaine which currency and heroin and cocaine constituted evidence of violations of the narcotics laws of the United States.

(Title 18, United States Code, Sections 1510 and 2.)

COUNT FOUR

The Grand Jury further charges:

1. In and about April, 1970, and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere, PETER DALY, JOSEPH NOVOA, FRANK RAMOS, DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", JOAQUIN NIEVES, and ELISSA POSSAS, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, con-

spire, confederate and agree together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

2. It was part of said conspiracy that the defendants and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

3. Among the means whereby the defendants accomplished the objectives of this conspiracy were the following:

(a) The defendants PETER DALY and JOSEPH NOVOA and others, under the guise of their official capacity as police officers, seized large quantities of heroin and cocaine and illegally retained in their possession approximately five (5) kilograms of heroin and cocaine,

(b) The defendants PETER DALY and JOSEPH NOVOA and others concealed and then transferred, and caused to be transferred, the five (5) kilograms of heroin and cocaine to an intermediary.

(c) The intermediary with the assistance of the defendant FRANK RAMOS sold the heroin and cocaine to the defendants - METRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek",



JOAQUIN NIEVES, ELLISA POSSAS and others.

OVERT ACTS

In furtherance of said conspiracy and in order to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere.

1. On or about April 15, 1970, the defendants PETER DALY and JOSEPH NOVOA and others seized over 100 kilograms of heroin and cocaine, the exact kind and nature to the Grand Jury unknown, from Apartment 4-F, 210 West 19th Street, New York, New York.

2. On or about April 15, 1970, the defendant PETER DALY, in the vicinity of 210 West 19th Street, New York, New York, placed a brown valise containing approximately five (5) kilograms of heroin and cocaine in a motor vehicle.

3. In or about May and June 1970, the defendants PETER DALY and JOSEPH NOVOA and others had conversations in which they agreed among themselves and with others to sell and transfer the above mentioned narcotic drugs.

4. In or about May and June, 1970, the defendants FRANK RAMOS, and others, met with the defendants DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS.

5. In or about July, 1970 the defendant FRANK RAMOS and others met with the defendant JOAQUIN NIEVES.

6. During the summer of 1970, the defendants PETER DALY and JOSEPH NOVOA met in New York, New York with others to the Grand Jury known and unknown and divided among themselves a total of approximately \$54,000, as the illegal proceeds from the sale of the above-mentioned narcotics.

(Title 21, United States Code, Sections 173 and 174).

COUNT FIVE

The Grand Jury further charges:

On or about April 15, 1970 in the Southern District of New York, PETER DALY and JOSEPH NOVOA, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately five kilograms of heroin hydrochloride and cocaine hydrochloride, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174;  
Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:



In or about May and June 1970, in the Southern District of New York PETER DALY, JOSEPH NOVOA, FRANK RAMOS, DEMETRIOS PAPA-DAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS, the defendants, unlawfully, wilfully, and knowingly did receive, conceal, buy and sell, and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174;  
Title 18, United States Code, Section 2.)

COUNT SEVEN

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York, PETER DALY, JOSEPH NOVOA, FRANK RAMOS, DEMETRIOS PAPA-DAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been

23a

imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174;  
Title 18, United States Code, Section 2.)

COUNT EIGHT

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York, PETER DALY, JOSEPH NOVOA, FRANK RAMOS and JOAQUIN NIEVES, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Section 2.)

COUNT NINE

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York PETER DALY, JOSEPH NOVOA, and FRANK RAMOS, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, conceal-



ment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of cocaine hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Sections 2.)

COUNT TEN

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York, PETER DALY, JOSEPH NOVOA, and FRANK RAMOS, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of cocaine hydrochloride after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Sections 2.)

(illegible)  
FOREMAN

s/ Paul J. Curran  
PAUL J. CURPAN  
United States Attorney

JUDGMENT AND PROBATION/COMMITMENT ORDER  
(Filed August 22, 1975)

United States of America vs.

UNITED STATES DISTRICT COURT for

DEFENDANT

SOUTHERN DISTRICT OF NEW YORK

PETER DALY

Docket No. 74 Cr. 229 I.B.W.

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

in the presence of the at-  
torney for the government  
the defendant appeared in  
person on this date

MONTH	DAY	YEAR
AUGUST	22	1975

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

X WITH COUNSEL

VICTOR J. HERWITZ, ESQ.  
(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE, X NOT GUILTY

NOT GUILTY. Defendant is discharged

There being a verdict of

X GUILTY.

Defendant has been convicted as charged of the offense(s)  
FINDING of unlawfully, wilfully and knowingly did receive, con-  
& JUDG- ceal, buy and sell, and facilitate the transportation,  
MENT concealment, purchase and sale of narcotic drugs, to  
wit, heroin hydrochloride, and cocaine hydrochloride.



(Title 21, U.S. Code, Sections 173 and 174;  
Title 18, U.S. Code, Section 2.)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TEN (10) YEARS, on each of counts, 5, 6, 7, 8, to run concurrently with each other.

SENTENCE OR PROBATION ORDER Counts 1, 2, 3, 4, 9, 10, are dismissed by the Court. Defendant ordered to pay the costs of prosecution.

SPECIAL  
CONDI-  
TIONS OF  
PROBATION

(MICROFILM -- Aug. 26, 1975)

ADDITION-AL CONDI-TIONS OF PROBATION In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revise probation for a violation occurring during the probation period.

COMMIT-MENT REC-OMMENDA-TION The court orders commitment to the custody of the Attorney General and directs that defendant be given credit for such time that he was in custody in England.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

U.S. DISTRICT COURT  
FILED -- AUG. 22, 1975  
S.D. of N.Y.

s/ Inzer B. Wyatt  
INZER B. WYATT, D.J.  
August 22, 1975

NORTH WESTERN HEALTH BOARD

*Sheil Hospital*  
*Ballyshannon*

CO. DONEGAL.

30th April 1974.

To whom it may concern.

Report re Peter Daly on stay in Sheil Hospital.  
D. O. B. 22.8.1933.  
U.S. Social Security No. 112284346.

The above was admitted to the Sheil Hospital on 17.3.1974, having been referred there by Dr. J. M. Kerr, Bundoran, complaining of the following symptoms - dizziness, loss of balance while walking, headache, loss of balance also provoked by tilting his head, and pop noises in his left ear. These were taken to be sequelae to his injuries received in car accident on 1.2.1973 in which he had received skull fracture with severe cerebral concussion and in which it was noted he received skull fracture in the left parietal bone.

At examination, he was found to have patchy loss of memory for recent and more distant events; he was nervous, very anxious and apprehensive, unable to sleep unless with heavy sedation; acute depressive episodes associated with restlessness and agitation.

Within 3 days he developed shivering attacks with cough, purulent sputum; pyrexia - 103, tachycardia.

When I saw him on 26.4.1974 he complained of headache and burning sensation intermittently over the left side of orbit and head which wakes him at night, it also occurs during the day; he also complained of double vision following any prolonged period of ~~concentrating~~ at reading, T.V. viewing or even fatigue from walking.

Present Treatment:

Valium T.D.S.

Tunal for sleep.

Concordin which he had full course in Hospital.

Has now been discontinued due to intolerance to side effects.

Norgesic T.D.S. for neck spasm and pain.

BEST COPY AVAILABLE



Page 2 of 2.

Telephone - 65300

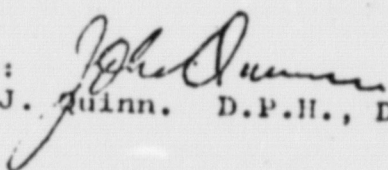
*Sheil Hospital*  
*Ballyshannon*  
CO. DONEGAL.

Opinion:

- 1) His pyrexial illness while in hospital was due to influenzal - virus U.R. tract infection.
- 2) His other symptoms are the direct sequelae to his head and brain injury and may be expected to continue for some considerable time.

He is unfit for continuous and regular employment at this time. He is to continue on the medication prescribed here in and return for recheck at regular 14 day intervals.

Signed:

  
J. Quinn. D.P.H., D.C.H., L.N.

Patient was in Hospital ----- From : March 17th/74  
To : April 13th/74.

REPORT OF DR. MAXWELL J. CARTER, LONDON, DATED MARCH 30, 1975

DR. MAXWELL J. CARTER      37, DEVONSHIRE PLACE,  
L.R.C.S.(E), L.R.C.P., L.R.C.P.S., D.D.S. FACDS      LONDON, W1N 1PE.

01-935 2114

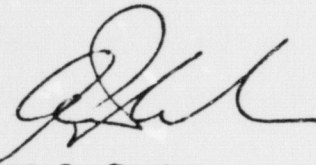
March 30, 1975

TO WHOM IT MAY CONCERN:

Mr Peter P. Daly:

This patient is presently taking the following drugs and should continue to do so until the regimen is changed on his doctor's advice:

1. Tablets Clonidine 0.025mg - two tablets twice a day.
2. Ergotamine Medihaler - 1 dose every 5 minutes up to 6 per day or 15 per week
3. Tablet chlordiazepoxide 10mg - one three times a day
4. Tablet nitrazepam 5mg - one or two at night when required.



M. J. Carter



DR. MAXWELL J. CARTER  
 LRCS (Ed), LRCP, LRFPs, BDS, FACDS

01-935 2114

37, DEVONSHIRE PLACE,  
 LONDON,  
 WIN IPE.

March 30, 1975

PRIVATE AND CONFIDENTIAL

MEDICAL REPORT ON MR PETER P. DALY. DATE OF BIRTH 22.8.33  
 HISTORY AND CLINICAL EXAMINATION: 17.3.75

PRESENTING COMPLAINTS: All are said to date from a motor vehicle accident on February 1, 1973

1. AMNESIA: for long, middle and short term memory. Has become forgetful of all small detail, things like telephone numbers, birthdays (although remembers his own), names, some faces, some old friends, the names of some relations, sequences of events e.g. an accurate history of what treatment and nature of injuries from the motor smash but can remember gross facts without necessarily being able to place them in time. Does not forget to shave or dress himself properly, nor where he lives, although could be confused about appointment times.
2. HEADACHES: whole of left side of skull involved and has a definable distribution, usually feeling 'like a toothache' but at times like a 'stabbing' and other times like a burning. Extends from the anterior border of the left temporalis muscle to the midline of the neck, left post-auricular area, left frontal area, left eye, down neck into upper part of the trapezius muscle. Gets these attacks some 3 or 4 times a day. Only known precipitating factors are ice cream and chocolate. May have nausea at the same time.
3. DIZZINESS: 2 types are present:
  - a) Following exertion: e.g. following 'sit-up' exercises and he spins rather than the room spinning. Does not know if he falls to one side.
  - b) Following 'stimulants' (his definition): e.g. sugar, sweets, chocolate - his thoughts are speeded up, his stomach 'speeds up', and he maybe passes more urine. He feels off balance and this leads to a panic reaction rather than a spinning sensation. His mouth goes dry and he becomes very anxious.
4. FEAR OF HEIGHTS: Needs to hold onto something when e.g. on a 5th floor landing or on high bridges.
5. BLACKOUTS: May feel relaxed and at rest then suddenly feels he is falling to one side i.e. he goes off balance. Cannot recall if he falls to any particular side. It is a momentary phenomenon and may get this sort of attack say once every two days - used to be more common but not so now. Doesn't go unconscious and does not get drowsy afterwards or feel the need to lie down. Never injures himself during attacks.

6. TREMORS LEFT ARM AND LEG: usually accompanied by headaches mentioned in (2) and he may experience stabbing pains down the back. Attacks last  $\frac{1}{2}$  to  $\frac{3}{4}$  hour when outside in open but last for longer inside. Has no control over tremor.
7. POLYDIPSIA AND POLYURIA: Mainly when he gets anxious in (3) b) and feels it is a nervous reaction. Mouth, throat, and right down feels dry. Never wakes from sleep with these symptoms.

PAST MEDICAL HISTORY:

1. An accident at age 8-9 years where he was run over by a bicycle and was unconscious for 9 hours.
2. Motor car accident some time later - suffered head cuts.
3. Tonsillectomy and adenoidectomy as a child and had 2 operations for deviated septum.

No known allergies except perhaps to penicillin and codeine.

MOTOR ACCIDENT: February 1, 1973

Was unconscious and kept hospitalised for some three weeks suffering from

- a) Skull fracture in left fronto-parietal region
- b) Possibly another fracture of parietal bone
- c) Three left side fractured ribs
- d) Absolute retrograde amnesia of accident and probable absolute anterograde amnesia of 4 days afterwards
- e) severe cerebral concussion
- f) multiple injuries
- g) abdominal trauma
- h) Discharged complaining of headaches and dizziness, weakness loss of hearing, ringing and popping in left ear, pain in ear, and insomnia. Had frequent nausea, tired easily, nervous and irritable, apprehensive, difficulty in concentration and memory. Persistent pain in back of neck, numbness in small and ring fingers, restriction in motion of neck, and pain in left rib cage.

Neurological examination by Dr Lawrence I Kaplan reported on September 17, 1973 showed no focal abnormalities and EEG on April 9, 1973 was within normal limits. Doctor Kaplan reported that in his care he continued to have post-concussion effects.

When seen at the Sheil Hospital, Ballyshannon, Co. Donegal, the patient had had dizziness and paraesthesia of both legs of a few hours duration on January 20, 1975. Chest x-ray at that time showed no active pulmonary lesion but the right hemidiaphragm was high - ? cause.

SOCIAL HISTORY: Non smoker and never smoked. Non drinker and never drank. Does not take unprescribed drugs.



**FAMILY HISTORY:** Father alive but ? has neoplasm of oesophagus. Mother alive and well apart from varicose veins 1 brother alive and suffers from asthma. 3 sisters alive and probably well. There are no known family illnesses. 2 siblings have minimal brain damage (said to be hereditary) whilst 2 more siblings are normal. Wife suffers from alcoholism.

**EXAMINATION:** NOTE: Both the oral and physical examinations were conducted under considerable difficulty - the latter done with the patient lying on a wood table.

**ORGANIC MENTAL TESTING:** (Motive for examination not known to patient)

- A. Orientation: Knew the day, full date, time, and place but there was a delay of anything up to 5 seconds in response
- B. Memory: Non personal - knew the years of the 1st and 2nd world wars but not the days or months.  
Knew who the Queen of England is  
Knew the full names of the present and last Presidents of the U.S. but took 15 secs to recall Johnson and got his name wrong  
Personal -knew his place of birth, names of schools but faltered over dates of attendance  
Knew his past employers full description.
- C. Was not able to recall any of "John Williams, 142 West Street, Gateshead," after 5 minutes lapse. i.e. Powers of recall very low.
- D. Digit span:  
50% correct response to memory of 7 digits recited forwards.  
60% correct response to memory of 6 digits  
100% correct response to memory of 4 digits  
When asked to recite these same digits backwards, his memory was completely lost from five digits upwards.  
Simple arithmetic sums of addition and multiplication were responded to quickly and correctly
- E. Concentration: Response was quick normal for the days of the week forwards and backwards. Response to months was quick normal reciting them forwards, but slow when recited backwards.
- F. Aphasia: none detected
- G. Abstract cognition: no abnormality detected
- H. Apraxia: none detected
- I. Perseveration: no abnormality detected
- J. Confabulation: None

**ASSESSMENT:** There is a degree of confusion in his orientation, poor memory for distant events and very poor memory for recent events whether personal or non-personal. Powers of recall are very weak, but concentration is relatively normal.

## PHYSICAL EXAMINATION:

Well nourished white Caucasian male with no evidence of recent weight loss.  
Height and weight not taken.

Eyes: fundi, chambers and pupils - normal

Tonometry: R eye 17mm mercury, L eye 15mm mercury

Nose: L airway almost blocked through deviated septum and there is a minor degree of rhinitis with minor excess of mucus. There is an old depressed fracture of the nasal bones and the cartilages are dislocated and collapsed.

Ears: R ear choked with wax. Hearing very much diminished and a watch was only heard in both right and left ears to 1" (normal for this watch is about 7").

Mouth, pharynx, neck, thyroid gland: normal

Respiratory system: There is diminished air entry to the right chest on full inspiration, but the breath sounds are normal.

Cardiovascular System: Electrocardiogram not done but the heart sounds and pulse were normal and the blood pressure was 135/95

Abdomen: No tenderness in the renal angles. He was tender to superficial palpation in the right hypochondrium and markedly tender to deep palpation with guarding. The right border of the rectus abdominus was easily felt through fat during guarding. No deeper structures were palpable because of the guarding. There was no apparent increase in liver dullness to percussion but my impression is that there is pathology present in the liver rather than the gall bladder or duodenum. The patient reports he does not like fatty foods (rather than fatty foods causing symptoms) and he could never eat red meat.

Hernial orifices, genitalia, - normal

Rectum and prostate: not examined.

Central and peripheral nervous systems:

There was fine lateral nystagmus, otherwise there was no abnormality detected in the cranial nerves (except perhaps the auditory, which was not comprehensively examined).

The pupil reflexes were equal and reacting.

Reflexes: All were very brisk except R ankle, all abdominal, and dartos jerks which were diminished.

Superficial and deep sensation: normal over the whole body.

Finger-nose and knee-ankle: normal

Vibration sense: increased at R inner and outer malleoli.

Proprioception: normal

Muscle tone: normal

Muscle power: normal



## LABORATORY PARAMETERS:

## BLOOD:

White cell count: 8.0 (4.0 - 11.0)

Hematocrit: 55% (40 - 54%)

Haemoglobin 18.6 (13.5 - 18.0)

Red Cell Count: 6.2 (4.5 - 6.5)

MCV 89  $\mu^3$ MCH 30  $\mu\text{g}$ 

MCHC 34

Erythrocyte Sedimentation Rate: 1mm in 1 hour

## LIPIDS:

Cholesterol 177mg

Triglycerides 104mg

## LIVER:

Total bilirubin: 1.0 (0.1 - 1.1)

Alkaline phosphatase 62 IU (15 - 85)

L.D.H. 194 (100 - 220)

S.G.O.T 26 (14 50)

## BIOCHEMISTRY:

Iron 159  $\mu\text{g}$ 

Total protein 8.5 (6.0 - 8.0)

Albumin 5.1 (3.2 - 4.5)

Calcium 10.0

Inorganic phosphorus 3.1

Fasting glucose 85mg

Blood urea 34mg

Uric acid 6.4mg

## ELECTROLYTES:

Chloride: 99 mEq

CO<sub>2</sub> 25

Potassium 4.2

Sodium 138 mEq

URINE: pH 6.0, physically normal.

albumin 30mg (trace)

glucose nil

ketones nil

bilirubin nil

blood cells nil

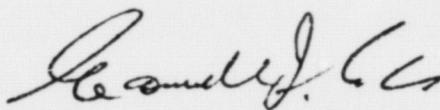
## DIAGNOSIS:

1. Amnesia and certain organic mental defects (see page 3)
2. Classical migraine - possibly related to liver pathology and possibly related to food allergens. - accounting for 2 and possibly 3b 6 and 7 of presenting complaints.
3. Post head injury cerebrovascular insufficiency - possibly accounting for 1, 2, 3a, 3b, 5 and 6 of complaints.
4. Possible liver pathology - I have not been able to investigate this patient as much as one should, and strongly feel that hepatoma or other liver lesion be ruled out followed by gall bladder disease, diverticular disease in the hepatic flexure etc.
5. Labile adrenal gland response giving proxysmal tachycardia.

When this patient is eventually sorted out I should very much like to hear the diagnosis.

He has been placed on the following medication:

1. Clonidine hydrochlor. 0.025mg 2 tablets b.d.
2. Ergotamine Medihaler - 1 dose every 5 mins., maximum 6 per day or 15 per week.
3. Chlordiazepoxide tablets 10mg - 1 t.d.s.
4. Nitrazepam 5mg - 1 tablet nocte.



Maxwell J. Carter  
Physician.



TRANSCRIPT OF PROCEEDINGS BEFORE HON. INZER  
B. WYATT DATED MAY 13, 1975

35a-1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

United States of America

X

X

-v-

X

Peter Daly,

X

74 Cr. 229

X

Defendant.

X

X

New York, N.Y.

May 13, 1975

12:15 pm

Room 506

Before:

Hon. Inzer B. Wyatt,

District Judge.

A P P E A R A N C E S:

Paul J. Curran, Esq.,

United States Attorney;

Joseph Jaffe, Esq., Assistant U. S.  
Attorney, of counsel.

John P. Schofield, Esq.,

Attorney for defendant.

- - -

any elaborate written motions. You can make an appointment to see me and I will try to straighten it out.

MR. SCHOFIELD: Fine, Judge.

THE COURT: Now about Mr. Daly's physical condition--

MR. JAFFE: I haven't seen the letter yet, your Honor.

MR. SCHOFIELD: Here it is (indicating).

THE COURT: We are not inhumane; we don't want to be--

MR. SCHOFIELD: I will xerox a copy for you and send it to you.

MR. JAFFE: Your Honor, Mr. Schofield has just presented me with one single document captioned "To Whom It May Concern" in one packet of documents on a medical history; and with his permission we can xerox this right now, along with another copy of the indictment, and give it right back to him.

THE COURT: All right; and, Mr. Schofield, I am sure that West Street will do the best they can, and if there is a special medication, or Mr. Daly has his own physician, I am sure the Warden will permit his own physician to see him; if not, I will ask him to.

As I say, we will keep Mr. Daly in custody

BEST COPY AVAILABLE



1  
2 and available but we do not want to be inhumane.

3 MR. SCHOFIELD: Right.

4 THE COURT: All right?

5 MR. JAFFE: Your Honor, one final statement  
6 with regard to Daly, and that is I will assemble whatever  
7 other facts and sources of statements made which would be an  
8 indication of flight, and once we have all those facts we may  
9 again appear before the court to ask for an increase in  
10 bail if the facts warrant it.

11 MR. SCHOFIELD: Judge, I think it would be an  
12 action in futility.

13 THE COURT: You think it is futile.

14 MR. SCHOFIELD: It's futile, Judge.

15 THE COURT: All right, but it certainly will  
16 be a condition of any bail that all passports of Mr. Daly  
17 must be surrendered.

18 MR. SCHOFIELD: I believe the officer that  
19 accompanied him from Ireland--or England, excuse me--has it  
20 now.

21 MR. MARTIN: It was seized by the State De-  
22 partment.

23 MR. JAFFE: Your Honor, one other point: I  
24 am informed by Mr. Martin, who is from the DEA, that Mr.  
25 Daly has certain medication with him, which I believe is the

1  
2 subject matter of the correspondence that Mr. Schofield  
3 just gave me. I don't know whether the Bureau of Prisons  
4 permits that medication to come in or not, and I don't know  
5 whether even if the court directed that he be permitted to  
6 bring it in that they will allow it. I think it will have  
7 to wait until the doctors there speak with him. I suppose  
8 if he brought it with him and informed the doctor of the  
9 medication they would let him continue, but I don't know the  
10 answer.

11 I just want the court to be aware of the fact  
12 that he has certain medication, about which I am informed.

13 MR. SCHOFIELD: Are you going to permit him  
14 to bring it up to West Street.

15 MR. JAFFE: I don't control West Street;  
16 the Bureau of Prisons does.

17 MR. SCHOFIELD: Well, I mean he can bring  
18 it up there, and depending on what they want to do there,  
19 at least, rather than giving it to me.

20 MR. JAFFE: I would assume so.

21 MR. SCHOFIELD: That will be fine.

22 THE COURT: Well, I am always very reluctant  
23 to interfere in any way with the Bureau of Prisons. I do  
24 not have the authority to do it; they have the responsibility  
25 for it, but in appropriate cases when they make what seems



1  
2 to me a reasonable request, generally my request has been  
3 honored.

4 MR. SCHOFIELD: Judge, I think we can cut  
5 through it. I will be meeting with Mr. Daly tomorrow, and  
6 if he has any difficulties and they won't accede to his re-  
7 quest, then I will make an application before you, but I think  
8 they will--and I hope they do.

9 THE COURT: All right.

10 THE DEFENDANT: Excuse me, Judge--

11 THE COURT: Yes, Mr. Daly.

12 THE DEFENDANT: The medication that was  
13 prescribed that I am presently supposed to be on, they did  
14 not give it to me today. In England I wasn't permitted to  
15 be taken out to have certain tests conducted, and one of them  
16 was on my liver and the other was on my fractured skull.

17 THE COURT: Yes.

18 THE DEFENDANT: And this is probably in the  
19 doctor's report--this is one of his major problems, that he  
20 couldn't make a proper, in-depth diagnosis of the situation,  
21 and he recommended this medication as a kind of in-between--  
22 what would you call it?--until such tests were made.

23 I don't think West Street has the facilities  
24 to conduct the tests that he wanted to conduct. It would  
25 be brain-wave tests of the skull, and so on. The prison

1  
2 that I was in in Britain did not have the facilities either,  
3 and they wouldn't allow it either. I believe--I haven't  
4 read the report; I have not been given the report but I know  
5 from the doctor, being with him in England, that this was  
6 the big problem in England. He wasn't permitted to take  
7 me physically out of the prison to make a proper analysis, so  
8 that he could make a proper diagnosis; and then prescribe  
9 proper medication. The medication I am presently receiving  
10 is just--it is just a livable situation type of thing at this  
11 point.

12 I am sorry for interjecting.

13 THE COURT: Is there a doctor at West Street.

14 MR. JAFFE: I believe there is. There is  
15 a medical technician there all the time, your Honor, and  
16 doctors available every day.

17 THE COURT: Then, Mr. Jaffe, ask West Street  
18 to have a doctor--not a technician but a doctor examine  
19 Mr. Daly as soon as possible; and in the past my impression  
20 has been that where the doctor at West Street felt that  
21 something should be done which wasn't available at West  
22 Street, they have arranged to have that person taken in  
23 custody to Bellevue.

24 MR. JAFFE: That's my understanding, your  
25 Honor.



1  
2 THE DEFENDANT: Another thing, your Honor--

3 THE COURT: Yes, Mr. Daly.

4 THE DEFENDANT: Could a copy of my doctor's  
5 report in England be sent to the doctor?

6 MR. SCHOFIELD: Well, I am going to make  
7 copies. Mr. Jaffe will make a number of copies.

8 THE COURT: Yes.

9 MR. SCHOFIELD: I should have done it but I  
10 wanted to open that sealed envelope before the court, and I  
11 did not do it before.

12 THE DEFENDANT: Thank you.

13 THE COURT: All right.

14 MR. SCHOFIELD: Thank you, your Honor.

15 MR. JAFFE: Thank you, your Honor.

16  
17 (Adjourned to June 2, 1975

18 at 9:30 am in Room 518 for trial)

19 - - - - -  
20  
21  
22  
23  
24  
25

gwjp

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PETER DALY,

Defendant.

74 CR. 229

May 27, 1975  
3:00 p.m.

BEFORE:

HON. INZER B. WYATT,

District Judge.

A P P E A R A N C E S:

PAUL J. CURRAN, ESQ.

United States Attorney for the  
Southern District of New York,  
JOSEPH JAFFE, ESQ.,

-and-

EUGENE F. BANNIGAN, ESQ.,

Assistant United  
States Attorneys

JOHN B. SCHOFIELD, ESQ.

Attorney for defendant.



1 gwjp  
2 that the questions couldn't be asked and that the privilege  
3 would have to be asserted outside of the courtroom would  
4 arguably or at least give the defendant Daly something to  
5 argue about in the event of a conviction. And, therefore,  
6 consistent with the Rock of Ages principle, if it's a  
7 close question, I ought to give the defendant the benefit  
8 of the doubt, shouldn't I?

9 MR. SCHOFIELD: I concur in your opinion,  
10 Judge.

11 THE COURT: I'm sure you would.

12 MR. SCHOFIELD: Judge, if I have a conference  
13 with Mr. Hurwitz, and I can speak to him, and I have a  
14 conference with Mr. Daly, that I haven't had a chance to  
15 have, all this may be resolved. I have been meeting him  
16 on the fly truly. In fairness to him, I did read the  
17 minutes over the weekend. Other than that, I have spent  
18 no time because I have been on trial. I informed the  
19 Court when I first came in to represent him that I was  
20 going to start one trial after another before I got to  
21 this.

22 THE COURT: Mr. Jaffe, you may have a lot of  
23 learning on your side, but I think I would let him go  
24 ahead and cross examine Aquiluz for the reasons that I  
25 indicated. Let's don't spend any time looking up law

1 gwjp

2 about it. I am convinced that the pragmatic approach is  
3 to let him go ahead and do it.

4 MR. JAFFE: To complete that matter, your  
5 Honor, I think Mr. Schofield is incorrect on the law.  
6 While the Fifth Amendment may be waived by a plea of  
7 guilty, I don't think the lawyer-client privilege is ever  
8 waived until there's either publication or waiver. Your  
9 Honor having ruled, I don't want to reargue it. I want to  
10 inform the Court we will hand up our requests to charge  
11 tomorrow. I believe that your Honor's charge in this  
12 case is going to be precisely the model that we are going  
13 to draft our requests from. Our requests are done. They  
14 are being retyped. I don't know that we will have any  
15 additional requests except perhaps some supplemental re-  
16 quest, depending on what the facts bring out, that we would  
17 ask the Court to charge on.

18 With regard to any memoranda with regard to  
19 either conversations under the agency theory or any other  
20 types of evidence we want to put in, they are being pre-  
21 pared now. We will try to hand them up enough in advance  
22 of trial so we can get a ruling from the Court with regard  
23 to those matters as they arise.

24 THE COURT: I would assume that the Government  
25 would want to show flight.



1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 vs.

5 PETEP DALY,

6 Defendant.

-----X  
:Before:

:HON. INZER B. WYATT,

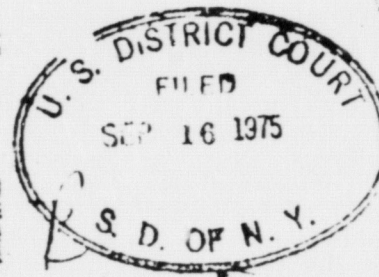
: District Judge

: and a Jury

: 74 CRIM. 229

:  
-----X

7  
8  
9 New York, June 2, 3, 4, 1975



STENOGRAPHER'S MINUTES

1 ms

2 MR. JAFFE: With respect to the 3500 material,  
3 since we have a jury panel here, at the noontime we will  
4 put on the record all the documents that were furnished to  
5 defense counsel.

6 THE COURT: All right.

7 MR. HERWITZ: May I put this on the record, your  
8 Honor:

9 I was brought into this case on Wednesday,  
10 Wednesday afternoon. Mr. Schofield reported to me in  
11 substance the conversations, the proceedings before your  
12 Honor on that day or the day before -- I am not sure --  
13 relative to the possible conflict of interest. I have  
14 considerable familiarity with a great deal of the background  
15 of this case, having represented Lieutenant Egan in three  
16 trials, cross-examined Mr. Aguiluz and others extensively.  
17 It is short notice to go on. I would not dare go on, but  
18 for that prior knowledge.

19 I would ask Mr. Jaffe if he would tell me in  
20 advance the order of battle, because I can't and I could not  
21 read all the prior testimony between Wednesday and today,  
22 having in mind that I have had other legal and professional  
23 obligations to perform. Mr. Jaffe said he could not up  
24 to today tell me. If he could tell me at this time whom  
25 he expects to call as his first witness, at least I might



lp2

41a

bring in the jury, I don't know whether you would approve of this, but in reading the testimony of Aguiluz at the last trial there is some testimony which he gave at the last trial which was objected to but which at this trial I intend to object to, and I was wondering whether I might get a ruling on some of these things before Mr. Jaffe opens to the jury.

Specifically, for example, your Honor, in the Novoa trial which I was referring to when I said the last trial, Mr. Aguiluz testified that when the four individuals were brought back from New Jersey by Novoa, Daly and Aguiluz, allegedly they were falsely accused of having a gun, and Aguiluz testified that Daly gave him a wink, and his testimony indicated that it was Daly who suggested that a gun be planted on these people.

Now, I would object to that testimony if it should come in on the ground that it is not connected with the crime charged; it is not a similar act, and would be prejudicial.

There is also testimony about the division of \$1200 taken from these four people and allegedly divided.

There is also testimony by Aguiluz that when the prisoner - I believe it was Gonzales - by a ruse got out of the cell and was allowed to see papers that had been taken from him and attempted to swallow one, Daly kicked him in

ms

properly testify as to his relationship with Daly.

I don't understand why that can't be.

MR. HERWITZ: If he testifies he was his partner from February, 1970, to November, 1970, then the idea might be conveyed that in all of Aguiluz' derelictions Daly was a partner.

THE COURT: The charges here before us now are in April, May and June of 1970. The relationship of Aguiluz and Daly during that period seems to me is certainly relevant.

MR. HERWITZ: I have no objection to testimony during that period, your Honor.

MR. JAFFE: The testimony is not only does Mr. Aguiluz say, but the Police Department bears out Daly Aguiluz and Novoa were together approximately nine or ten months.

THE COURT: And anything that has to do with the selling, taking, receiving and so forth of narcotic drugs I think I have to permit. I have attempted to recognize your point to the extent that I have said that partnership arrangements for the taking of money and sharing of money, while I think Mr. Jaffe has a good argument even as to that, I think I am going to be cautious and exclude the sharing of money. I have gone that far, but the rest of it I



ms

MR. JAFFE: Yes, your Honor.

THE COURT: All right.

MR. JAFFE: May it please the Court, Miss Freeman, Counsel, ladies and gentlemen of the jury:

This case involves the theft and distribution of enormous amounts of heroin and cocaine by corrupt police officers in the New York City Police Department. It involves the thefts of a large amount of money from narcotics offenders arrested by those officers. It involves the solicitation of substantial amounts of money from those narcotics offenders in order to sell out the case made on those offenders.

My name, as his Honor has told you, is Joseph Jaffe. Mr. Eugene Bannigan also sits at counsel table. We are Assistant United States Attorneys. It is our obligation to present the case to you on behalf of the Government.

The indictment, as his Honor told you, charges a number of defendants, including Peter Daly. Only Peter Daly's case is before you. The indictment charges Peter Daly with receiving, selling, and sharing in the proceeds of five kilograms of heroin and cocaine, that is, 11 pounds of heroin and cocaine. Only Detective Daly, as his Honor told you, is before you for trial. Mr. Daly is charged with obtaining the five kilograms of heroin on or about April 15, 1970.

1 ms

Aquiluz-direct

78

2 A As I recall, we were in my car parked on the  
3 northeast corner of 14th Street and Seventh Avenue.

4 Q Directing your attention to approximately 10 p.m.  
5 on the evening of April 14, 1970, where were you at that  
6 time?

7 A On the northeast corner of 14th Street in my  
8 car in the company of Detectivee Daly and Detective Novoa.

9 Q What, if anything, did you see at that time and  
10 what, if anything, did you do?

11 A At approximately 2200 hours I observed a white  
12 Galaxie Ford moving down Seventh Avenue bearing license  
13 plates from Florida containing four individuals.

14 MR. HERWITZ: I don't know if the jury knows  
15 that 2200 may be.

16 THE COURT: Using the 24-hour clock I assume  
17 that is 10 o'clock.

18 THE WITNESS: Yes, sir.

19 THE COURT: On a 12-hour clock schedule we would  
20 call it 10 o'clock at night?

21 THE WITNESS: Yes, sir.

22 Q Did you observe anything about this car with  
23 Florida plates?

24 A As I stated before, it contained four individuals  
25 and it bore Florida plates.



ms

Aguiluz-direct

79

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Did you see the car doing anything?

A Yes, sir, when it crossed the intersection I further observed that it came to a stop on the southeast corner of 14th Street?

Q What, if anything, happened?

A I further recall that I observed two individuals leave the car and proceed to the Cafe Oveido.

Q What happened there, if anything?

A They went to the window of the cafe Oveido and knocked on the window. Approximately two minutes later an individual exited from the restaurant and he engaged these two individuals in conversation.

Q Was there anything in particular you noticed about the individual who came out of the Oveido Restaurant?

A He was vaguely known to me as a major narcotics trafficker in New York.

MR. HERWITZ: I object to that and move to strike it.

THE COURT: No, I will permit it to stand.

MR. HERWITZ: May I have the witness testify as to the name of the individual?

THE COURT: Yes, you may ask him that on cross-examination.

1 1p5

Aguiluz-direct

2 A I recall that our activity at the motel parking  
3 lot involved complete identification of the four individuals  
4 and possibly a cursory search of their trunk.

5 Q Do you know at this time what the identity of  
6 the four individuals who you stopped that evening - what  
7 the identity is?

8 A Yes, sir.

9 Q Would you tell the jury the names of the people  
10 who you stopped in New Jersey?

11 A There was Emilio Gonzales, Elena Risso, Jose  
12 Mulas and one Jorge Araya.

13 Q Do you know if Risso used any other name?

14 A If I recall one other name, Yolando Sarmiento.

15 Q What happened at the motel after the events you  
16 have already told us about with regard to the identification,  
17 if anything?

18 A I recall that the manager of the motel at the time,  
19 as I recall, was standing on the veranda of the motel, and  
20 there came a time when he informed Detective Novoa that he  
21 thought that these four individuals were staying at the  
22 motel.

23 Q Did anything happen after that?

24 A Yes, sir. I recall that that was an important  
25 point for us, and the manager agreed to take us into the



1 lp7

Aguiluz-direct

2 motel and possibly pinpoint the room where each of these four  
3 individuals were staying, supposedly staying. In fact, it  
4 does take place some time. So we go into the motel --

5 MR.HERWITZ: I object to that, your Honor.

6 THE COURT: Yes. Strike out "it does take place  
7 some time."

8 BY MR. JAFFE:

9 Q Only tell us what you recall happened.

10 A I recall going into the motel, and I was shown --  
11 that would be myself and Detective Novoa -- three rooms  
12 that were possible residences for the four individuals  
13 out in the car.

14 Q After you were in the motel does there come a time  
15 when you and your fellow detectives and the subjects go  
16 back to New York City?

17 A Yes, sir.

18 Q How did that come about?

19 A That came about because the four individuals, as  
20 I recall, were very indignant of the fact that the police had  
21 stopped them. They made statements to the effect that they  
22 were legitimate people and they have roots in the com-  
23 munity, and they were willing to show us exactly where they  
24 lived.

25 Q Did you speak with these four people?

1 lp8 Aguiluz-direct

2 A On several occasions.

3 Q What language did they speak?

4 A Mainly Spanish.

5 Q Now would you tell us how it came about that you  
6 and the individuals got back into Manhattan?

7 A As I recall we came back the same way we had  
8 gone out to Englewood; rotated downtown on the West Side  
9 Drive and existed somewhere on the West 18th Street exit.

10 Q In whose car did you ride?

11 A I was inside the individuals' car. There was  
12 the four subjects, myself in the back seat and Detective  
13 Novoa up front.

14 Q And did Detective Daly come back to New York?

15 A Yes. He turned and followed in his car.

16 Q You told us you drove down the West Side Highway --

17 THE COURT: Excuse me.

18 You must have left one car in New Jersey?

19 THE WITNESS: That is exactly the case, your  
20 Honor.

21 THE COURT: All right.

22 Q You told us you drove down the West Side Highway  
23 and got off at the 18th Street exit?

24 A That's right.

25 Q What happened from that point on?



1 lp10 Aguiluz-direct

2 A As I recall -- this is a little vague to me --  
3 I don't know who was driving the car, either the female,  
4 Elena Risso, or Emilio Gonzales, but, at any event, the  
5 request was for Emilio Gonzales to identify himself, by me.

6 Q Did he respond to your request?

7 A Yes, sir. He went inside of his jacket pocket  
8 and produced a plastic portfolio which he gave to me.

9 Q What was in the inside of the plastic portfolio?

10 A I recall there was several personal documents,  
11 to include three passports containing Emilio Gonzales's  
12 picture with different signatures and different countries of  
13 issue.

14 Q After you saw that, what if anything did you do?

15 A I informed my fellow officers; Detectives Daly  
16 and Novoa, that I was going to place the individuals under  
17 arrest for falsification of official documents.

18 Q Did anything happen after that?

19 A Yes, sir. I recall the conversation that I had  
20 with Detectives Daly and Novoa where I informed them that  
21 this arrest might not stand up in court, because I wasn't  
22 an expert on false documents.

23 It was at this time that I recall that Detective  
24 Daly gives me a wink and he says to me, "Carl, I think they  
25 have a gun in the car also."

1 lp11

Aguiluz-direct

2 Q What if anything happened after that?

3 A I recall that in fact I observed Detective Novoa  
4 holding a gun, at which time he states to me that he found  
5 the gun in the middle part of the front seat of the car.

6 Q What happened after that?

7 A My next recollection is that we proceeded to the  
8 Sixth Precinct for booking and processing of the prisoners.

9 Q Did there come a time, just to jump ahead a little  
10 bit, ultimately, the gun that was seized was vouchered with  
11 the New York City Police Department?

12 A Yes, sir.

13 Q By the way, when the gun was seized do you  
14 recall whether it was loaded or unloaded?

15 A I don't recall, sir.

16 Q I show you what has been previously marked as  
17 Government's Exhibit 3 for identification and ask you if  
18 you can identify that?

19 A Yes, sir.

20 Q Would you tell the Court and jury what Exhibit 3  
21 for identification is?

22 A It is a property clerk's invoice of the Police  
23 Department of the City of New York.

24 Q Is that a copy of the invoice?

25 A Yes, it is.



lp

Aquiluz-direct

94

jects?

A I recall that we placed three of the males in a cage that is situated in the squad room, and as consideration for the female, who had stated to us she was pregnant, we sat her outside the cage in a chair.

Q When you say cage, would you tell the jury what you are talking about?

A It's a detention cell.

Q Prior to putting these three men into the cell, did you take any personal property from them?

A Yes, sir. We removed all personal property, including sums of U.S. Currency.

Q Who removed the property?

A As I recall, it was a collective thing. All the detectives involved conducted the search.

Q Was the property placed in any particular area?

A As I recall, it was placed on top of the desk. It would be the first desk closest to the detention cell.

Q And did there come a time when either you or any of your fellow officers looked at the papers?

A Yes, sir. In our initial chance on the street I paged through the portfolio and also in detail at the precinct.

Q Did there come a time when anything happened with

lp

Aquiluz-direct

95

the subject Gonzales?

A Yes, sir. I recall that during the processing of the prisoners to prepare the normal forms of arrest, Gonzales called me over to the detention cell and he tells me at that time that I took a hundred dollars off him.

Q Did you respond to him?

A Yes, sir. I was initially indignant to the fact and subsequently I removed him from the cell and walked him over to the desk where all their property was on top of the desk.

Q Did you say anything to him?

A I asked him to pinpoint for me exactly where the hundred dollars was and he indicated that it was in the portfolio.

I recall that I picked up the portfolio and gave it to Gonzales.

Q What if anything happened at that point?

A My next recollection is that he paged through the portfolio for approximately 30 seconds, and he proceeded to push me out of the way, almost knocking me down, and also he proceeded to do the same thing with Detective Novoa.

Q Did he do anything after that?

A Yes, sir. My next recollection is that he proceeded to a corner of the squad room by himself after



lp

Aquiluz-direct

97

room the female proceeded to the desk where all their personal property was located and began ripping up all the papers that we had initially deposited there.

Q What did you and your fellow officers do, if anything?

A After we established order in the squad room we put Gonzales back in the detention cell, and we sat the female down in the same chair, with the only exception that we handcuff her to a bar that was attached to the detention cell.

Q Subsequently did you overhear any conversation among the subjects?

A I recall prior to some conversations that I overheard, we had a situation that I recall Detective Daly, Novoa and myself were concerned as to what piece of paper Gonzales had swallowed, and in the procedure by process of elimination we were able to establish what piece of paper in fact this subject had swallowed and what importance it had.

I also recall during this examination of documents, I recall that Gonzales was in conversation with the other two males and the female outside the detention cell, and I overheard in Spanish Gonzales say, "The cargo is safe. We will not suffer any loss."

1p

Aguiluz-direct

98

Q Do you know whether Novoa heard the same conversation?

A I don't think so, sir.

Q As a result of going through the papers and hearing the conversation, did you have any further discussion or do anything else?

A Yes, sir. I recollect that maybe Detective Novoa and myself were able to ascertain what piece of paper, in fact, Gonxales had swallowed, and we established that it was a rent receipt with an address of 210 West 19th Street, Apartment 4-F.

Q What if anything did you do?

A      My next recollection is that in conversations between Detective Daly, Novoa and myself it was established that this investigation will be continued to the premises on 19th Street.

I further recollect that Detective Novoa designated to stay with the prisoners in the squad room and Detective Daly and I would investigate the 19th Street address.

Q Now, had you in the personal possessions that you found, found any keys?

A Yes, sir. We found somewhere in the area between 15 to 30 lock keys.

Q Do you recall from whose possession you took



1 lp7

Aguiluz-direct

2 continue I should like to pass this around to the jury.

3 THE COURT: All right, do that in the same way.  
4 Pass it madam foreman and she can pass it around.

5 BY MR. JAFFE:

6 Q Now directing your attention, Mr. Aguiluz, to a  
7 time period when you and your fellow officers were engaged  
8 in processing, as you described it, the prisoners.

9 So the jury understands you, what does processing  
10 mean?

11 A It simply means that the necessary forms to  
12 legalize the arrest, the administrative forms, are filled out.

13 Q Now directing your attention to that period of  
14 time, do you recall having any conversations while the pro-  
15 cessing was going on with regard to Detective Novoa, Mr.  
16 Daly and personal property that had been seized from the  
17 subjects?

18 A Yes, sir.

19 Q Will you tell us, to the best of your recollection,  
20 did you have any conversations about the personal property  
21 that had been seized earlier in the morning?

22 A Yes, sir. I recollect the initial conversation  
23 that I had with Detective Novoa, he approached me in the  
24 detective squad room to tell me that Sergeant Stefania had  
25 informed him that he wanted to split the money, the U.S.

1 lp8

Aguiluz-direct

2 Currency, that was removed from the four subjects collectively,  
3 which amounted to \$1200.

4 I recall that Detective Novoa was very mad about  
5 the whole thing, and he mentioned the fact that in the  
6 past Sergeant Stefania had received large sums of money  
7 from us, and he was aware that we had incurred some ex-  
8 penses during this investigation, and we thought -- at  
9 least he thought the \$1200 would be kept by us, if any,  
10 and not split up with him.

11 Q After you had this conversation with Novoa,  
12 did you have any conversations with anybody else on the  
13 same subject matter?

14 A The other conversation I recall is that were  
15 all present -- that would be Lieutenant Eagan, Sergeant  
16 Stefania, Detective Daly, myself and Novoa -- where  
17 collectively it was agreed that the \$1200 is going to be  
18 split up equally among us; and, in fact, at some point  
19 in time in the squad room that money is split up and I  
20 received approximately one-fifth of \$1200.

21 Q From whom did you receive the money?

22 A Detective Novoa.

23 Q And did you see Detective Novoa give anybody  
24 else any money?

25 A Yes, sir. All of the people that I just men-



T4 pm

1

ms

Aquiluz-direct

104

2

Q Do you recall the conversation that you had?

3

A Yes, sir, I recall the conversation to Detective

4

Novoa was a request by Detective Daly and myself to obtain

5

an expert lock-picker from the Police Department in order

6

to open the two closet doors.

7

Q Did you inform Mr. Novoa, Detective Novoa, in

8

that conversation what you had found in the apartment thus

9

far?

10

A I recall in substance I informed him that up to

11

that point the only thing that we had found was empty

12

suitcases and a few passports.

13

Q Was there any further conversation with regard

14

to a lock-picker?

15

A Yes, sir, I recall that I talked it over with

16

Detective Novoa and it was decided or it might have been

17

my request initially that one, Detective John Kidd, who

18

was known to us to be a lock-picker, would be called and

19

brought into the investigation.

20

Q After this telephone call with Novoa did you

21

have any other telephone conversations with any other police

22

officer?

23

A Yes, sir, I recall several conversations from

24

the apartment. I recall a conversation to Lieutenant

25

Egan's house, where I brought him up to date, and once

ms3

Aguiluz-direct

1  
2 John Kidd?

3 A My closest recollection that would have been  
4 somewhere between three o'clock and three-thirty in the  
5 morning or four o'clock in the morning at the very latest.

6 Q Did there come a time when Mr. Kidd arrived?

7 A Yes, sir, I recollect he arrived, JOHN Kidd.

8 Q Do you recall whether you or Mr. Daly met Mr.  
9 Kidd?

10 A I recall that Detective Daly and myself waited  
11 in the apartment for approximately 45 minutes and I further  
12 recall that Detective Daly left the apartment to meet John  
13 Kidd on Seventh Avenue and 19th Street, s was indicated  
14 by Detective Nova.

15 Q Now, there came a time, I take it, that John  
16 Kidd was in the apartment?

17 A Yes, sir, he arrived in the company of Detective  
18 Daly.

19 Q Did you have a conversation?

20 A I don't recall any specific conversation, outside  
21 of the fact that he was there to open two closet doors and  
22 that was to be his assignment.

23 Q What happened after that conversation?

24 A I recall that Detective Kidd began trying to  
25 open the doors and I further recall that Detective Daly and



ms4

Aguiluz-direct

107

1 I went to the living room of the apartment where we sat  
2 down. I recall he sat down in a chair and I laid down on  
3 a couch while Detective Kidd was trying to open the doors.  
4

5 Q By the way, Mr. Aguiluz, at this time when you  
6 and Daly were in the apartment and Detective Kidd was in  
7 the apartment, had you obtained a search warrant?

8 A No, sir.

9 Q Did there come a time when Mr. Kidd was success-  
10 ful in some manner in opening one of the two closet doors?

11 A Yes, sir, he opened one of the closet doors and  
12 I recall that Detective Daly and I myself removed a suitcase  
13 from the floor thereof of the closet. We opened the suit-  
14 case and we found it only contained ascale, some narcotics  
15 paraphernalia and some residue of narcotics on the bottom  
16 part of the suitcase.

17 MR. HERWITZ: I object to the characterization  
18 "residue of narcotics".

19 THE COURT: What did the substance look like  
20 that was in the suitcase?

21 THE WITNESS: As I recall, your Honor, it looked  
22 like a mixture of cocaine and heroin on the bottom part of  
23 the suitcase.

24 THE COURT: Was it a powder?

25 THE WITNESS: A white powder.

ms5

Aquiluz-direct

108

1

2

THE COURT: A white powder?

3

THE WITNESS: Yes, sir.

4

Q Did you find any scales of any sort?

5

A Yes, sir, we found scales, residue of narcotics --

6

MR. HERWITZ: I object to the characterization.

7

THE COURT: I will sustain the objection.

8

You found the same white powder that you

9

described a moment ago?

10

THE WITNESS: A residue of white powder, your

11

Honor. We further found some Christmas wrappings in the

12

suitcase,

13

Q What happened after that first closet door was

14

opened? You found the material you just described to the

15

jury?

16

A I recollect that Detective Daly and I had a

17

conversation to the effect that we were disappointed, that

18

we expected to find something else other than an empty suit-

19

case in that closet. I recall vaguely there was conversa-

20

tion back to the 6th Precinct with Novoa where I relayed

21

the information to him as to the suitcase situation involv-

22

ing the first closet door.

23

Q Now, after that what did you do?

24

A My next recollection is that Detective Kidd

25

continued his lock-picking with the second door and



ms6

Aguiluz-direct

and Detective Daly once again and I went back to the living room and rested.

Q Do you know how long it was that you and Detective Daly were there in the living room while Kidd worked on the second lock?

A My closest estimation would be anywhere from 20 to 30 minutes.

Q After you were there did anything happen?

A Yes, sir, my next recollection was that Detective Kidd walked over to me on the couch where I was half asleep, woke me up and informed me that after he opened the door he felt that Detective Daly and myself had made a tremendous arrest and there were packages stacked from the floor to the ceiling in that closet.

Q Did you and Detective Daly do anything?

A Yes, sir. I recall that Detective Daly and myself walked over to the closet and I recall what I initially thought was that the closet was full of pot.

MR. HERWITZ: I object to the operation of the witness' mind, your Honor, and move to strike the answer.

THE COURT: Yes. Don't tell us what you thought. Just tell us what you saw, what you did.

THE WITNESS: I will, your Honor.

Q What is it you saw when you and Daly went over

ms10

Aguiluz-direct

113

with regard to the packages in the closet?

A I recall that either before Detective Daly and I went back to the closet, I recall a conversation that I placed to Detective Novoa to inform him of the find that Detective Daly and I had made at the apartment. After this conversation I recall that Detective Daly and I walked back to the closet and began the removal of all the packages from the closet to the living room floor.

Q Will you describe to the jury what you saw that was in the closet?

A What was in the closet was a stack of half kilo and kilo packages of narcotics from the floor to the top of the ceiling.

MR. HERWITZ: I object to the characterization.

THE COURT: Yes, I will sustain the objection, what it was.

You say they were narcotics. You didn't test each package, I take it?

THE WITNESS: Your Honor, hw asked me what happened after we performed the test, and Detective Daly and I walked back to the Closet and it was at this time we began the removal of all the packages.

THE COURT: But you didn't test each package?

THE WITNESS: No, sir.



msl4

Aguiluz-direct

117

1 I furthe recall that I had a conversation on the living  
2 room floor with Detective Daly on our knees. He stated  
3 to me that he had a request to keep five kilograms of  
4 narcotics or five kilograms of the plastic bags containing  
5 the white powder.  
6

7 Q Do you recall what your response was?

8 A Yes, sir, I, in substance, said it was all righ  
9 with me. He further stated the retention of the  
10 narcotics would be for flaking purposes.

11 Q Who said that?

12 A Detective Daly.

13 Q Was anybody else present to overhear that con-  
14 versation?

15 A No, sir.

16 Q Do you recall at what point, to give you a  
17 time span, in what point of removing the packages from the  
18 closet was this?

19 A It was either halfway or three-quarters.  
20 I don't recall exactly at what point. But we had removed  
21 at least half of the packages from the closet.

22 Q After this conversation was there any further  
23 conversation about this subject?

24 A I recollect that a suitcase was obtained by  
25 either myself or Detective Daly and I recollect further

1 ms15

Aguiluz-direct

118

2 Detective Daly and I, in fact, put five kilograms of white  
3 powder into this suitcase.

4 Q Do you recall the color of the suitcase?

5 A It was brown in color.

6 THE COURT: How were you able to tell that it  
7 was five kilograms?

8 THE WITNESS: I recall, your Honor, that the  
9 packages in the closet were made up of either half kilo  
10 packages or one kilo packages. We had extracted a scale  
11 from the first closet. I further recall that we weighed  
12 some of them.

13 THE COURT: You weighed some of the packages?

14 THE WITNESS: Yes.

15 THE COURT: You saw some of them were one kilo  
16 and some of them were half kilo?

17 THE WITNESS: Yes, sir.

18 THE COURT: And so you took five kilograms on  
19 that basis, put them in the suitcase?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right.

22 Q What, if anything, happened to the suitcase?

23 A My next recollection is that Detective Daly  
24 and I in agreement -- it was agreed that he would take the  
25 suitcase out.



1 ms

Aguiluz-direct

119

2 Q Mr. Aguiluz, whether or not you had an agreement,  
3 the best thing to tell the jury is what you recall, if  
4 anything, that was said?

5 A As I recall, in substance it was decided by  
6 Detective Daly and myself that he would be the one to  
7 remove the suitcase from the apartment and transport it  
8 to the trunk of his car that was parked downstairs on the  
9 street.

10 Q Did you agree to that?

11 A Yes, sir.

12 Q What, if anything, happened after that con-  
13 versation?

14 A My next recollection is that Detective Daly, in  
15 fact, removed the narcotics from the apartment and after a  
16 short period of time he returned back to the apartment.

17 Q Was there any discussion as to where that  
18 valise of narcotics would be kept?

19 A Yes, sir. As I stated before, it was agreed  
20 that he would take it downstairs to his car and place it in  
21 the trunk of his car.

22 Q To digress for just a moment, you said in the  
23 conversation you had with Daly on the floor that the  
24 narcotics were for flaking purposes. Will you tell the  
25 jury what flaking means?

1 lp11

Aguiluz-direct

2 A Yes, sir. I have a specific recollection to the  
3 effect that approximately a week after the arrest I in  
4 conversation with Detective Daly and myself -- Detective  
5 Daly and Novoa, I requested that the narcotics --

6 Q Let me interrupt you a minute. If you are  
7 going to tell us about conversations try to tell us who  
8 was present, when the conversation took place, and then  
9 to the best of your recollection what each person said,  
10 in substance, if not in exact words.

11 A Yes. Approximately a week after the arrest I  
12 had conversations with Detective Daly and Novoa --

13 THE COURT: Where?

14 THE WITNESS: In the vicinity of SIU head-  
15 quarters, your Honor, at which time I recollect that I made  
16 the statement to Detective Daly and Novoa that I want to  
17 take possession of the valise that was in the trunk of his  
18 car containing the 5 kilograms of white powder.

19 I further recollect, in substance, that the  
20 final decision was -- that it was agreed that I would take  
21 possession of the valise.

22 Q At the time --

23 MR. HERWITZ: If your Honor please, the witness  
24 is giving conclusory statements like "agreed," and so on.  
25 This is directly involved in the case, and I would ask that



lp

Aguiluz-direct

148

Q And who was present in the conversation?

A Myself, Detective Daly and Novoa.

Q Do you recall, was there a conversation?

A Yes, sir. I recall that Detective Novoa initiated a conversation to the extent that he told me, "What are you going to do with these narcotics?" And I answered to him, "Well, whatever you want to do; you know, I don't think it's an intelligent thing for me to carry narcotics, especially when we should know better."

I further recall Novoa said, "Well, let's dump the shit in the river." And I said to him, "I don't care either way; whatever you want to do, Joe."

Q Was there anything else said thereafter?

A Yes, sir. I recall a statement by Detective Daly, and he tells Novoa and I to calm down and to perhaps think it over; that there might be something else here involved that we can gain monetarily from.

Q Do you recall any other conversation?

A I recall, in substance, that before the meeting was concluded that we talked about selling the narcotics, and also that we talked about selecting a conduit, or someone to sell, to cushion the narcotics sale for us on the street.

I further recall that several names were brought up as to whoever the conduit would be, and ultimately it

lp

Aquiluz-direct

149

1  
2 was decided that my brother-in-law, Sal Boutureira, would  
3 be the conduit to sell the narcotics on the street.

4 MR. HERWITZ: I believe he said several names  
5 were brought up, your Honor. That is characterization or  
6 conclusion. If the witness knows the names that were  
7 brought up, since he was asked about the conversation,  
8 he be required to so state.

9 THE COURT: Yes, you make a note and you can ask  
10 that on cross-examination.

11 All right, let's go on.

12 BY MR. JAFFE:

13 Q Do you have any recollection whether during  
14 that conversation that you just related to us was there  
15 any discussion concerning why you would use a conduit?

16 A Yes, sir. We weren't -- at least, I recall  
17 my rational at the time --

18 Q Excuse me, you cannot testify to what you thought.  
19 You can only testify to your best recollection of what was  
20 said.

21 A Yes. My best recollection was that in sub-  
22 stance we were afraid to go up front and sell the narcotics  
23 ourselves on the street. So a conduit, a go-between  
24 would be used to sell the narcotics.

25 Q And who participated in that discussion?



lp

Aquiluz-direct

153

of narcotics, and that we wanted him to sell it for us on the street.

Q After that conversation occurred did you do anything?

A Yes, sir.

After that conversation, as I recall, at the conclusion of that conversation Sal, in fact, did say that he would be the conduit for the sale of narcotics.

Subsequently, some time later, the narcotics were turned over to Sal by me.

Q When you say they were turned over, can you tell us, do you have any specific recollection of how the narcotics got from you to Sal?

A I recall that the narcotics went from the trunk of my car to Sal's house.

Q Did you place them there?

A Yes, sir. I delivered the narcotics there, and I placed them underneath his bed.

Q And at the time that you did that was your brother-in-law home?

A No, sir. I recall that he was out.

Q Subsequently did you have a conversation with Sal again?

A After the delivery to his house, yes, I had a

ms9

Aquiluz-direct

165

1 discuss the case amongst yourselves nor with anyone else.

2 You may retire until tomorrow morning at 9.30.

3 (Jury excused.)

4 THE COURT: Anything else today?

5 MR. JAFFE: Your Honor, I have six small pieces  
6 of 3500 material typed which we do not believe to be 3500  
7 material, which I want to hand up to your chambers. I have  
8 them back in my office. So I would like to do that.  
9 They do not at all relate to this witness, so there is no  
10 rush to have them reviewed tonight.  
11

12 I need some other advice from your Honor with  
13 regard to the ruling that you have already made concerning  
14 similar acts.

15 Your Honor, as I understand it, has ruled that  
16 we are not to elicit from Mr. Aquiluz similar acts of the  
17 taking of cash.

18 THE COURT: Do you want to excuse this witness?

19 MR. JAFFE: I think we ought to, but when we  
20 are done we should bring him back and instruct him.

21 THE COURT: Mr. Aquiluz, you can be excused.

22 (Witness excused.)

23 MR. JAFFE: Your Honor, there is one act that  
24 relates to what has been called either the Airport case or  
25 the Banderas-Tores case, that is the case where more than



ms10

1 \$200,000 was seized at the airport by Daly, and approx-  
2 imately fifteen, five and five were seized at the Holiday  
3 Inn by Novoa and Egan and company. Without getting into  
4 a dispute on that, Mr. Herwitz is very aware of those acts.  
5

6 In this case I have a witness who will testify  
7 that they were flaked by Detective Daly when they were  
8 arrested at the airport, and that they were supposedly  
9 arrested on a Hilton Hotel complaint of theft of services,  
10 and that, in fact, Detective Daly has stated to his fellow  
11 officers and to this man that they were being arrested for  
12 cocaine, and that when money was demanded back, when  
13 Torres and the others demanded their money back from Daly,  
14 Daly said, "No money; cocaine" and showed them a package.  
15

16 Also, there was testimony that what he did,  
17 that is, Daly, he flaked them by putting the cocaine into  
18 a garbage can, not on them personally. It is an instance  
19 of Daly being in possession of narcotics and using that  
20 narcotics, and we believe we ought to be able to prove  
21 that. Since your Honor has ruled to the contrary, we  
22 wanted to make sure that was clear on the record.

23 THE COURT: In point of time how is it related  
24 to the charges here?

25 MR. JAFFE: It occurred on May 11, your  
Honor.

1

2

THE COURT: Of 1970?

3

MR. JAFFE: Of 1970.

4

THE COURT: Does the evidence show possession  
by Mr. Daly of narcotics?

6

7

MR. JAFFE: It shows evidence of possession of  
cocaine by Daly.

8

9

THE COURT: I said you could prove possession  
of narcotics if related in point of time.

10

11

12

13

14

15

16

MR. JAFFE: I think I understood that. But my  
question, which we need a ruling on also in order for that  
to be complete, the reason he used the narcotics and  
possessed the narcotics was so that he could say to the  
defendants when they demanded their money back after an  
unlawful arrest, they said, "We want our money back," and  
he said, "No money; cocaine."

17

18

19

20

21

That is the testimony from two different  
witnesses, and we believe under the doctrine of complete-  
ness the only way that possession of cocaine, that  
narcotics has any meaning, is to be able to show the  
purpose for which he was using it.

22

23

24

THE COURT: Well, the Government is represent-  
ing, though, that the evidence establishes that Daly had  
possession of cocaine?

25

MR. JAFFE: Two witnesses who stated that and



sls

179

Now, it's for the jury to say whether it is similar, but possessing narcotics is part of the offense here charged.

MR. HERWITZ: If your Honor please, there was no proof at all in the case I tried in Brooklyn -- and they put in the whole case -- that Daly possessed any narcotics. There was a --

THE COURT: If they had not proved that Daly possessed any narcotics in connection with a similar offense, then I will strike it out and tell the jury to disregard it. But the Government represents to me that they are going to show that.

MR. HERWITZ: Can I tell you, if I may -- and this is from my recollection; the case is a year old -- as I recall two or, I think, three persons were apprehended at the airport by Daly --

THE COURT: Well, we have to go on, Mr. Herwitz. I don't want to stop you but I don't like to keep the jury waiting.

MR. HERWITZ: I do appreciate that.

THE COURT: Mr. Jaffe, I ask you again, are you proposing to present any evidence in this alleged similar offense that Daly possessed narcotics?

MR. JAFFE: Yes, your Honor, that he personally

1 mp

Aguiluz-direct

208

2 and if I am going to be permitted to do that, I want to  
3 know that because I don't want to leave it sit and have  
4 him bring out everything so it looks like we are hiding  
5 it.

6 THE COURT: I will rule you will have to leave it  
7 sit.

8 (In open court.)

9 THE COURT: All right, Mr. Jaffe.

10 MR. JAFFE: Mr. Reporter, could you give the  
11 last question to Mr. Aguiluz.

12 (Last question and answer read.)

13 BY MR. JAFFE:

14 Q Do you recall any further conversation with  
15 regard to the subject of flaking on that day among yourself,  
16 Mr. Daly and Mr. Novoa?

17 A Yes, sir. I recall in substance that Detective  
18 Novoa and myself told Detective Daly that we had arranged  
19 with Sal to transport a kilo of narcotics to the Holiday  
20 Inn vicinity in order to maybe perhaps flake the other  
21 people that were in the apartment or in the motel room,  
22 which would include an individual by the name of Banderas,  
23 a female by the name of Elena Torres, and two others that  
24 I don't recall.

25 THE COURT: I have forgotten, did you tell us



T3 am

1

sls

Aguiluz-direct

2

Q Directing your attention to June 10, 1971,

3

did there come a time on June 10, 1971 when you appeared

4

before the Knapp Commission?

5

A Yes, sir.

6

Q And at the time that you appeared before the

7

Knapp Commission were you sworn to tell the truth?

8

A Yes, sir.

9

Q And did you, in essence, lie to them?

10

A Yes, sir.

11

Q And were you testifying about the events of

12

the April 15th arrest, among other things, that you just

13

described to this jury?

14

A Yes, sir.

15

Q Subsequent to your appearance before the Knapp

16

Commission did you have any conversation with Mr. Daly?

17

A Yes, sir. Some few days later after my

18

appearance at the Knapp Commission I saw Detective Daly

19

upon his return from Ireland, and Detective Novoa and myself,

20

in substance, informed him that we had appeared before the

21

Knapp Commission and we thought that he himself would be

22

subpoenaed to appear there also.

23

Q Did you have any discussion with Mr. Daly around

24

that time concerning attorneys?

25

A Yes, sir. Mr. Daly informed me that if he

1 mp2 Aguiluz-cross

2 the day of April 15, 1970. I woke Mr. Santa Cruz out of  
3 bed.

4 Q Did you tell Mr. Santa Cruz who prepared this  
5 affidavit that when you went out to New Jersey these people  
6 were apprehended in New Jersey and brought back to New  
7 York by you and your colleagues?

8 A No, sir, that was not the case.

9 Q That was not the case?

10 A That was not the case.

11 Q Did you tell Mr. Santa Cruz that when you got to  
12 New Jersey that you had to go to a motel and that you had  
13 switched rooms in the motel?

14 A I would have to say, Mr. Herwitz, when you apply  
15 for a warrant there is so much you can say.

16 Q Including the truth?

17 A Always the truth.

18 Q Of course.

19 MR. JAFFE: May we not have any comments from  
20 counsel?

21 THE COURT: Yes, Mr. Herwitz knows that. Don't  
22 make any comments. Just ask questions.

23 Q When you say always the truth, do you mean to say  
24 that you always make truthful affidavits in order to obtain  
25 search warrants?



1 mp3

Aguiluz-cross

2 A No, sir.

3 Q Have you ever made a truthful affidavit in order  
4 to obtain a search warrant?

5 A I can't answer that right now, Mr. Herwitz.

6 Q You have no recollection as you sit there now  
7 that during your career as a policeman you ever made an  
8 affidavit in order to obtain a search warrant which was  
9 truthful in all respects?

10 A I would say to give you a truthful answer that to  
11 my knowledge, my experience as a police officer in the City  
12 of New York, 99.9 per cent of any affidavit that is made  
13 for a warrant or an arrest is overextended in order to  
14 tailor, to consummate an arrest.

15 Q In other words, what you are saying is that you  
16 follow the practice of the New York City Police Department  
17 to tailor-make affidavits in order to obtain warrants in  
18 order to make arrests?

19 A What I am saying is that in any affidavit,  
20 application I made, this was the case, and it was the only  
21 way I could consummate an arrest.

22 Q Do I understand that you are saying that the only  
23 way you can consummate an arrest is make an affidavit which  
24 is false?

25 A I would say truthfully I practically in every

1 mp4 Aquilino cross

2 case that affidavit was overextended beyond a reasonable  
3 cause.

4 Q By the word "overextended" you mean untruthfully,  
5 don't you?

6 A I mean it was tailor-made to consummate the  
7 arrest and facilitate the seizure of drugs.

8 Q Regardless of what the truth was?

9 A That was the mentality at the time, sir.

10 Q And dealing with your mentality, that was your  
11 mentality?

12 A Well, I never dealt alone. I dealt with a team,  
13 with Detective Daly, Novoa and myself.

14 Q I am dealing with your mentality when you made  
15 out the affidavit. Isn't it a fact that in every affidavit  
16 that you ever made out while you were with SIU they were  
17 all tailor-made or extended and written without regard to  
18 what the truth is?

19 MR. JAFFE: May we have questions, instead of  
20 speeches?

21 THE COURT: I will sustain the objection. You  
22 can make the argument to the jury later. Let's go on.

23 Q Now, when you made out this affidavit the  
24 apartment had already been searched?

25 A Detective Daly and I had entered the apartment,



1 mp5

Aguiluz-cross

2 yes.

3 Q And the drugs that you warranted to had already  
4 been found?

5 A I have testified to that, yes.

6 Q By your definition was this affidavit over-  
7 extended or was it a lie?

8 A By my definition it was overextended and it was a  
9 lie, it was false.

10 Q Now, before you went to get this affidavit did  
11 you tell your commanding officer, Lieutenant Egan, "I am  
12 going down and get a false affidavit"?

13 A Absolutely He was aware of it.

14 Q In this affidavit you only mention yourself as  
15 being involved. You don't mention your partners, Novoa and  
16 Daly?

17 A No, sir. The law requires that one detective  
18 sign the affidavit.

19 Q Was there a man by the name of DeSilva?

20 A Yes, sir.

21 Q And did you see DeSilva on the night of April  
22 14 in conversation with any of these people?

23 A I don't recall that it was DeSilva or some other  
24 known violator that was known to Mr. Daly, Novoa and myself.

25 Q You allege in this affidavit that you saw these

s/s

Aquiluz-cross

282

1           A       I have no understanding to that effect either  
2  
3       positive or negative.

4           Q       As far as any understanding is concerned, you  
5       can still be prosecuted for this indictment, is that right?

6           A       Yes, sir.

7           MR. JAFFE: Let the record reflect I am handing  
8       a copy of Defendant's Exhibit B to the witness.

9           Q       Now the questions that you were asked in the  
10       grand jury which resulted in your indictment related to the  
11       same Frank Ramos who is involved in this case, is that  
12       right ?

13          A       Yes, sir.

14          Q       It was the same Frank Ramos that you allegedly  
15       tipped off which was the subject of the interrogation of  
16       you in the grand jury, was it not?

17               MR. JAFFE: Objection, your Honor.  
18       There is no testimony that he tipped anybody off.       In fact,  
19       he denied it when he was asked that question by Mr. Herwitz  
20       a few minutes ago.

21               THE COURT: I can't remember.

22               Did you or did you not tip off Frank Ramos?

23               THE WITNESS: Sir, I remember his question and  
24       I answered to the negative to him.

25               THE COURT: You said no?



pp2

Aguiluz-cross

1  
2 I would give him part of the narcotics, in other words, to  
3 assure his cooperation in the future.

4 Q Didn't you just say that you were remonstrating  
5 or said to Ramos, "Why do you fool around with narcotics?"  
6 Didn't you just say that?

7 A Yes, sir.

8 MR. JAFFE: He is mischaracterizing his testimony.  
9 He is talking about two different conversations.

10 THE COURT: I can't remember what the testimony  
11 was.

12 Q When did you have a conversation with Ramos in  
13 which you told him he should not fool around with narcotics?

14 A I would say before or after he made his request  
15 to me that he would accept payment for his information in  
16 the form of narcotics or money. I was not there to corrupt  
17 Frank Ramos. I was there to enforce the narcotics laws  
18 and to make as many arrests as I could.

19 Q Didn't you just say you had an understanding with  
20 Ramos that if you got narcotics or money that you would give  
21 him part of it?

22 A Yes, sir, this is after he had made the request  
23 to me for some form of payment for his cooperation, this is  
24 what he wants, and I am willing to give it to him.

25 THE COURT: Can we finish with this indictment

AFTERNOON SESSION

(2.00 p.m.)

(In the courtroom - in the absence of  
the jury.)

MR. SCHOFIELD: Your Honor, before the jury  
comes in I have an application.

THE COURT: Do you object to the witness  
being here?

MR. SCHOFIELD: Yes, I do on this.

THE COURT: All right.

MR. SCHOFIELD: If your Honor please, during  
the lunch hour I was informed by Victor Herwitz, who I  
brought in as co-counsel here, that there was a problem  
of my questioning Mr. Aquiluz, and I think the Court  
recalls that.

I learned that during my absence this morning  
he made a statement to the effect that Mr. Daly was paying  
our law firm a thousand dollars a month --

THE COURT: A year.

MR. JAFFE: A year.

MR. SCHOFIELD: A year, excuse me, towards any  
problems that Mr. Daly might have or ever had.

Now, what that effectively has done to me has  
put me out of commission as far as this trial is concerned,



1 sls

2 because I am going to take that witness stand refute  
3 that statement, because that never so happened. But  
4 unfortunately because it is happening and has happened at  
5 this trial at the very first witness, all the cross-  
6 examination which I had prepared to do on the other  
7 witnesses I now must turn over to Victor Herwitz, and I am  
8 effectively out of this case by that statement, because  
9 under the Canon of Ethics I can't be a witness where I am  
10 the trial attorney.

11 As the Court knows, Mr. Daly said he wanted me  
12 as a trial attorney, and I came up with that solution to  
13 bring Mr. Victor Herwitz in because I had the one matter  
14 with Mr. Aquiluz.

15 Now, I want to take the stand on it, and I  
16 just want to point out to the Court that if you see me  
17 absent now from the counsel table the basic reason is I am  
18 going to be a witness in this trial.

19 THE COURT: Well, as far as I am concerned if  
20 you want to be a witness on the defendant's case, Mr.  
21 Schofield, that takes place after the Government has  
22 presented its case in chief, and I don't know why you  
23 should not cross-examine the witnesses if you want to  
24 do it.

25 MR. SCHOFIELD: Understand, Judge, I would

1 sls

2 thousand dollars or 10,000 dollars a year is relatively  
3 important in the total context of the trial.

4 MR. SCHOFIELD: I agree with you, Judge, and I  
5 now so agree with you, I don't know what the reason was  
6 for bringing that out, except I must now feel that it was to  
7 sort of put the handcuffs on me, I don't know, or muffle my  
8 mouth in cross-examination.

9 THE COURT: Why don't you draw up an instruc-  
10 tion to the jury -- I mean, I can certainly consider an  
11 instruction to the jury that will eliminate any opprobrium,  
12 if that is the right word, from you. As far as I am  
13 concerned you are not laboring under any opprobrium at  
14 the present time.

15 MR. SCHOFIELD: I am not worried about that,  
16 Judge, but I have got a predicament which I didn't have  
17 when I knew the other day and I attempted to expedite this  
18 trial by bringing experienced counsel on it. That is all  
19 I am telling the Court.

20 THE COURT: Well, you have properly made a  
21 record of it, and, certainly, as a professional man you  
22 have protected yourself.

23 MR. JAFFE: Your Honor, can I just finish the  
24 record so it is complete as to the Government?

25 THE COURT: Yes.



ss5

Aquiluz-cross

342

1           A       I recall several.     I just can't be specific.

2           Q       Can you give me the name of any case which you  
3 say which you made a legitimate arrest?

4           A       You will have to show me my SIU arrest record  
5 and I will be happy to point out to you what cases that  
6 might be.

7           Q       From memory nothing stands out?

8           A       No, sir.

9           Q       During the time that you were with the SIU did  
10 you testify in any cases?

11          A       I recall grand jury presentations.

12          Q       Can you remember any case in which you testified  
13 in the grand jury in which you now say you testified truth-  
14 fully?

15          A       No, sir.

16          Q       Isn't it a fact, Mr. Aquiluz, that during the  
17 period that you were with the SIU, in every single affidavit  
18 you ever made out you lied?

19          A       Only in the line of duty to consummate an  
20 arrest and confiscate drugs.

21          Q       But you lied, didn't you?

22          A       Yes, sir.

23          Q       Every single one of them, didn't you?

24          A       That was the rationale that existed in New York  
25

1 mp

Ramos-direct

383

2 A That is correct.

3 Q Did anything happen within the same day or the  
4 next day in connection with those individuals and the  
5 purchase of narcotics?

6 A Yes. Jimmy the Greek called me up and he said,  
7 "We are coming down."

8 I said, "Well, you have everything?"

9 He said, "Yes."

10 So they came down. As soon as they came in the  
11 Cafe Madrid I went to the telephone and I called Salvador  
12 Boutureira and I explained they were back, and he said,  
13 "Fine, I will be right down."

14 When he came -- Salvador eventually came in the  
15 Cafe Madrid a few minutes after the call -- he said, "Are  
16 you sure they have the money this time?"

17 And I said, "Yes."

18 So Salvador told me, he said, "You tell them that  
19 the narcotics are placed, the package is placed behind a  
20 board in back of the Castle Hamburger Restaurant, which is  
21 located on the south side of 14th Street and Eighth Avenue.  
22 It is behind the board. There is some slight construction  
23 there and he will find the package with the narcotics there."

24 I, in turn, went back in the dining area, I sat  
25 in the booth with Jimmy the Greek and Elissa Possas, and



mp

Ramos-direct

384

1 I explained to them where the package of narcotics would be.  
2 Jimmy the Greek said, "All right." He got up. He said,  
3 "Elissa will stay here with you." He got up and at the  
4 door as he was leaving somebody else joined him, a person  
5 that was not known to me. They left. And a few minutes  
6 later there was a call for Elissa Possas. Elissa Possas  
7 went to the phone, spoke for a short time. She came back  
8 to the booth. She said everything was all right. She handed  
9 me the money.  
10

11 I said, "Good-bye."

12 She left and I took the package with the money to  
13 the back part of my restaurant. As I was going back to  
14 the back part of my restaurant Salvador Boutureira followed  
15 me.

16 Q Let me interrupt you just a minute. When you say  
17 the girl, the woman in the photograph gave you the package  
18 with the money, will you describe if you recall what it was  
19 she handed you?

20 A She handed me a package with money in it.

21 Q Is that your best recollection of what it was?

22 A I know it was money.

23 Q Go ahead, sir. You say you went to the back of  
24 the restaurant and that Boutureira came back with you?

25 A Yes.

1           Q       Now, directing your attention to 1971, there  
2  
3 came a time in 1971, did there not, when you were indicted  
4 for narcotics in the Southern District of New York?

5           A       Yes.

6           Q       Did you go to trial?

7           A       Yes.

8           Q       And when you went trial did you take the stand?

9           A       I did.

10          Q       And did you commit perjury?

11          A       I did.

12          Q       And thereafter was there a hung jury?       That is,  
13 the jury did not agree on a verdict?

14          A       There was.

15          Q       And subsequently did you appear in another trial  
16 in that case?

17          A       There was.

18          Q       And did you also perjure yourself there?

19          A       I did.

20          Q       And were you acquitted there?

21          A       I was.

22          Q       So in both of those trials in 1971 you testified  
23 and committed perjury, is that correct?

24          A       That's correct.

25          Q       And the perjury that you committed involved your



1 ms3 Boutureira-direct

2 the arrest that he made made.

3 Q Did he tell you what kind of drugs they were?

4 A Yes, he told me it was three kilos of heroin  
5 and two kilograms of cocaine.

6 Q Did you have any other conversation with him at  
7 that time?

8 A Well, he asked me if I could get rid of them  
9 and I told him I would try.

10 Q Did you tell him how it was you were going to  
11 get rid of them or try to get rid of them?

12 A I don't recall at that time if I told him how,  
13 but I maybe later told him that I went to see a friend of  
14 mine.

15 Q After this conversation with your brother-in-  
16 law did you see or speak to anybody else about the  
17 narcotics?

18 A Well, I went to see Frank Ramos at the Cafe  
19 Madrid.

20 Q At the time did you know Frank Ramos?

21 A Yes, I know him for a long time.

22 Q How long had you known Frank Ramos?

23 A Quite a few years.

24 Q Where did you know him from?

25 A From the Cafe Madrid. He was part owner of

ms4

Boutureira-direct

the place.

Q Did you see him on a regular basis?

A Well, I used to go there pretty often.

Q Now, when you went to see Ramos at the Cafe Madrid on prior occasions had you had any dealings with him in drugs?

A Sir, I never saw drugs before.

Q Did you know whether Ramos or had you heard that Ramos had a reputation for dealing in drugs?

A Well, I heard rumors that he knew a lot of people. That is it.

Q When you went to see Ramos concerning drugs, where did you see him?

A In the Cafe Madrid.

Q Did you have a conversation with him?

A Yes, I asked him if he could sell the drugs for me.

Q Did he say anything in return?

A Well, he said he had to see him, he probably could, but he had to see him, that he needed some samples.

Q What did you tell him, if anything?

A That I would get them for him.

Q Now, at the time you had this conversation with him at the Cafe Madrid --



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A I beg your pardon?

Q At the time you had the conversation you just told us about at the Cafe Madrid, did anybody overhear the conversation?

A No, sir.

Q Just you and Ramos?

A Right.

Q Was there anything else in the conversation you can remember?

A No. At that time the only thing there was about how much that I had, how many drugs that I had, and I told him I had five kilos. I told him what I had.

Q After that conversation did you do anything?

A Well, I left and I went to see my brother-in-law and I told him that he needed samples and I had to bring them to him. So he told me to go get them. So I went to my house and I took those bags and I marked each one with No. 1, 2, 3, 4 and 5.

Q When you say you took those bags, Mr. Boutureira, what are you referring to?

A The drugs, the five cellophane bags that were inside the duffle bag, the ones that my brother-in-law gave me.

Q You made a mark on them?

ms6

Pontureira-direct

1

2

A Yes, sir, 1, 2, 3, 4 and 5.

3

Q Did you do anything else?

4

A Well, I took five envelopes and I marked them the same way and then with a teaspoon I took some powder from each bag and I put it in each envelope. I sealed them again and I took those envelopes to Frank Ramos.

8

Q Where was that at?

9

A At the Cafe Madrid on 14th Street.

10

Q When you went into the Cafe Madrid did you see

11

Mr. Ramos?

12

A Yes, sir.

13

Q Did you have a conversation with Ramos?

14

A Yes, sir.

15

Q Was anybody else present?

16

A No, sir. There were people ther, but this

17

was private.

18

Q What, if anything, did you say and what, if

19

anything, did you do, and what, if anything, did he say

20

or do?

21

A Well, I gave him the envelopes and he went in

22

the toilet and he was there for a few minutes and then he

23

came out and he said they were good, that he could sell

24

them and he would give me about \$6000 apiece for each

25

kilogram.



1

2

A Yes, I did.

3

Q When Ramos was arrested you were concerned, were

4

you not?

5

A Yes, sir.

6

Q Because you knew that you had narcotics dealings

7

with Ramos?

8

A Yes, sir.

9

Q Was your brother-in-law also concerned?

10

A I guess he was.

11

Q Did you discuss it with him?

12

A Yes, I did.

13

Q Where did the discussion take place?

14

A I don't recall that.

15

Q Was it one discussion or more than one?

16

A It was many of them.

17

Q About Ramos having been arrested?

18

A Yes.

19

Q Did you do anything about it?

20

A Well, when he was arrested and he was brought

21

down here I believe to this building, down to the ground

22

floor, I came down with his wife and his sister.

2

23

Q You came down to what?

24

A To see if I could help him.

25

Q Were you invited by his wife to come down?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A I don't recall that. No, I don't think so.  
I think I met them here in the building.

Q Did you talk to him?

A Not at that time. I did not have a chance.

Q When was the first time you had the opportunity  
of talking to him?

A Maybe the same day or later, a couple of days.

Q Did you ask him whether he had been inter-  
rogated, questioned by any Federal officials?

A I guess that was the general conversation,  
something about that.

Q Did you tell him, "Don't say anything about  
me or my brother-in-law?"

A The only thing I recall saying is something  
like -- what can I tell you --

Q The truth?

A I know I am trying to find the words. What  
was it? I think it was, "Use your head and fight it."

Q You think you said something like that, "Use  
your head and fight then"? Give us your best recollec-  
tion of what he said and what you said on that occasion?

A I really can't say the words, I don't recall  
the words, but that was about it. I probably said, "You  
can beat it if you fight it," or something like that.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q What did you know about it?

A What do you mean what I knew about it?

Q What did you know about the case?

A Well, from what Frank had said, that he was not caught with anything, he didn't have any merchandise on him or any money on him, it was just somebody pointed him out.

Q So in this conversation Frank Ramos told you that? You now remember that?

A Well, something like that, yes.

Q Did he have a lawyer?

A Yes, two of them, I believe.

Q Were they present during the conversation you are telling us about?

A I don't think so.

Q And you told him he can beat it if he fights it? Is that it?

A Yes.

Q Did you not mean he can beat it if he lies?

A If he what?

MR. JAFFE: I object.

THE COURT: I will sustain the objection.

Q Now, you were very anxious that he should keep his mouth shut and not tell the officials what the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

truth was in this case?

A Yes, sir.

Q You were very anxious that he do that because you knew, did you not, that your brother-in-law might get involved?

A I was not worried about my brother-in-law; I was worried about myself.

Q Didn't your brother-in-law tell you that he might get involved in this case?

A He mentioned something.

Q Before your conversation with Ramos?

A I don't know whether it was before or after.

Q In other words, what you tried to convey to Ramos, this conversation that you're telling us about, was that he should keep his mouth shut and not say anything against you or your brother-in-law? Isn't that what you were trying to convey to him?

MR. JAFFE: Objection.

THE COURT: I will permit it.

A I was worried about myself.

Q In connection with this transaction you testified about?

A Right.

Q Involving this case? Did you ever tell him



1           ms  
2           that he should not say anything against your brother-in-  
3           law because your brother-in-law had done him a favor in  
4           that case?

5           A        I don't recall.

6           Q        Did your brother-in-law tell you to tell him  
7           that he should remember that if it was not for your brother-  
8           in-law he would have made a meeting that he was scheduled  
9           to make?

10          A        I believe there was some mention.

11          Q        Your brother-in-law told you that?

12          A        Yes.

13          Q        Didn't your brother-in-law tell you to tell  
14          Ramos to keep his mouth shut about that?

15          A        Well, at some time it was said something about  
16          that.

17          Q        And you did it, didn't you?

18          A        I believe so.

19          Q        You told Ramos, "Keep your mouth shut about that,  
20          if my brother-in-law has anything to do with it"?

21          A        Well, I don't know if those are the words I  
22          used.

23          Q        Something like that?        That was the substance  
24          of it?

25          A        Something like that.

ms

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q What did Ramos tell you he was going to do?

A That he was going to fight the thing.

Q Did he say he would not open his mouth, he would not tell them about it? Is that right?

A Yes.

Q You do know that he was indicted in this case?

A Yes.

Q And he testified that he was tried twice?

A Yes.

Q Did you attend the trial?

A No, sir.

Q Ever?

A I don't think so.

Q Did you speak to him during the time he was being tried?

A Many times.

Q And did he tell you that he was going to perjure himself and deny that your brother-in-law had told him about not making a meet?

A Yes.

Q Did you tell him to stick to that resolve?

A I didn't tell him anything; he just told me that.

Q You didn't approve or disapprove, but he assured



1           ms  
2           you that he was going to keep your brother-in-law out of  
3           it?

4           A       Right.

5           Q       Did you discuss it with Mr. Aquiluz, that you  
6           had talked to Ramos about it?

7           A       Yes.

8           Q       And Ramos was going to stick to his story that  
9           Aquiluz had nothing to do with the meeting?

10          A       Yes, sir.

11          Q       Or tipping him off?

12          A       Yes, I told that to Carl and to Joe and to Pete.

13          Q       To Carl and to Joe and to Pete?

14                   When did you tell that to Pete?

15          A       When this thing was happening.

16          Q       Was Peter Daly a partner of your brother's at  
17          that time?

18          A       I don't know whether they were partners, but  
19          they would see each other at times.

20          Q       When did you see Pete and tell him that, meaning  
21          Daly?

22          A       I don't recall where.

23          Q       You testified here that when this arrest occurred  
24          at the club or restaurant you became very nervous?

25          A       Yes.

1 we are required to prove, to prove Daly is guilty on the  
2 substantive count.  
3

4 THE COURT: There is no connection whatever  
5 between soliciting a bribe and receiving, transporting and  
6 selling narcotic drugs. There is no logical or relevant  
7 connection. It is totally irrelevant. I can't even  
8 understand how the Government can make the argument.

9 MR. JAFFE: I make the argument, your Honor,  
10 because it is the same people.

11 THE COURT: Well, of course, it is the same  
12 people, and if they went out and committed murder, they  
13 would be the same people.

14 MR. JAFFE: It is not that they committed  
15 murder. We are talking about trying to sell out the  
16 case from which the drugs that they have been charged with  
17 selling are the basis of, and we have to bring that out,  
18 because if the true facts of the case are discovered  
19 then their selling is going to be discovered. That is  
20 only one point, though. The other point is this scheme,  
21 this design, this plan that they are engaged in, this shows  
22 their knowledge and their intent to act together, to sell  
23 the drugs.

24 THE COURT: Well, that is the step I can't  
25 take. It has no tendency whatever to show that. It just



shows that they are bad people who will take bribes.

That is all.

Now, in the course of negotiating for the bribe, does the Government's evidence show that they said to anybody, "We have stolen five kilos; we have sold three of them," so that made admissions about the possession or sale of narcotics?

MR. JAFFE: Not to Lammatina.

THE COURT: Then I am afraid you will have to go on the assumption that the Lammatina evidence may not be introduced for the reasons that I indicated, and, of course, I have not only to consider the basis on which Judge Gurfein upheld its admission at the earlier trial, but I also have to consider that if it is a borderline case, if it is a close question, the evidence itself, it seems to me, it could be fairly argued by the defendant, is prejudicial. And the question is, does the danger of prejudice outweigh any tenuous connection it may have as to relevancy. And, frankly, Mr. Jaffe, I don't think it has any relevance at all.

MR. JAFFE: We are not going to put the witness on yet, your Honor. If we may be permitted to, we will try to argue it further later today or first thing tomorrow. I should think that our case will end by the end of

1p10 Kid-direct

2 versation did they come over and look in the closet?

3 A Yes, sir, they did.

4 Q And did you look there with them?

5 A Yes, I did.

6 Q And did you have any discussion of the packages?

7 A At that time when all three of us had looked in,  
8 there was quite a lot of jubilation in the apartment, and  
9 then we started pulling the packages out of the closet;  
10 there were also suitcases in the closet, and we brought them  
11 into the living room and we laid them on the floor of the  
12 living room.

13 Q Did you have a discussion of what the packages  
14 were wrapped in.

15 A I am not sure of the exact conversation, but I  
16 recall the newspaper that it was wrapped in was of a South  
17 American country. As I said I don't recall today what the  
18 country was that the newspaper was wrapped in, and the con-  
19 versation generally was that it must have just come in, so  
20 we assumed it was good stuff or pure stuff. And a field test  
21 was then conducted by one of the officers of powder taken  
22 from one of the packages.

23 Q Did you see the field test?

24 A Yes, I did.

25 Q You saw it performed?



1 ms  
2 in the closet that other people began to arrive at the  
3 apartment?

4 A Possibly two hours.

5 Q Do you have any recollection of any individual  
6 coming there in the first hour?

7 A It's possible. I really don't recall all the  
8 time period then.

9 Q Do you have any recollection of whether either  
10 Daly or Aguiluz left the apartment at any time during this  
11 hour?

12 A I don't recall any of them leaving the apartment  
13 at any time.

14 Q Did there come a time when other Police Depart-  
15 ment officers arrived at the apartment?

16 A Yes, there did.

17 Q Do you recall who the first to arrive was?

18 A I don't recall in what order they arrived.  
19 In fact, I didn't know most of them. Most of them were  
20 SIU or narcotics supervisors and I really do not recall  
21 what order they arrived in.

22 Q Did there come a time when certain news media  
23 arrived?

24 A Yes.

25 Q Television people arrived?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A That is correct.

Q How big an apartment was this? Do you remember?

A As I recall, it was a kitchen, the foyer or hallway where the closets were located, the sunken living room, and I don't recall if there was a bedroom or not.

Q Did you go into the kitchen for any reason?

A Yes, I believe that is where the telephone was located, and I had to call my office to let them know what was happening and also to get my partner up there.

Q In the first closet that you opened were there some valises?

A I believe there was a valise.

Q One valise?

A I believe so, but I am not sure on that, Counselor.

Q And in the second closet how many valises were there, if you remember, if any?

A I don't recall the number of them. Between the closets there were four or five, because that is what we loaded the narcotics in. We took those valises from the closets, but I don't recall how the valises were broken down between the closets.

Q In the picture which is Government's Exhibit 4,



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

how many suitcases do you see?

A Four. One can be called an attache case and one is a bag.

Q Do you remember whether there were any more suitcases other than those shown in that picture?

A I believe that we used every suitcase that we had to load the narcotics in.

Q You say you used all the suitcases that were in the closets?

A Yes.

Q You didn't see any suitcases missing from the apartment at the time this picture was taken?

THE COURT: How does he know? He had never been in the apartment before, I take it.

MR. HERWITZ: I'm referring to the ones that he saw.

THE COURT: You mean, did he see some valises and later notice that one of them or more had disappeared?

MR. HERWITZ: Your Honor, I could not do better than that. That is exactly what the question is.

THE COURT: Do you understand it?

THE WITNESS: No, I have no recollection of anything seeming any different than what we had found.

Q If at the time one of these bags had been missing

1                   ms                   Mid-cross                   581  
2                   you would have noticed it?

3                   MR. JAFFE:    Objection.

4                   THE COURT:   I will permit it.

5                   A        I assume I would have, yes.

6                   Q        Now, you heard no discussion, did you, between  
7                   Daly and Aguiluz about taking out part of the narcotics?

8                   A        No, sir.

9                   Q        And how long had you been a police officer at  
10                  the time this picture was taken?

11                  A        That was in 1970?    About seven years.

12                  Q        You say the narcotics were counted?

13                  A        Yes, sir, I did.

14                  Q        Did there come a time when you were told that  
15                  some narcotics had been taken out of the apartment?

16                  A        Not until the arrest of Detective Novoa?

17                  Q        Were you surprised when you heard that?

18                  A        Yes, I was.    I was surprised in that, as I  
19                  said, I recall counting a hundred keys, and at a time later  
20                  Detective Novoa -- this is several months after the date --  
21                  had stated that the lab had weighed in slightly over a  
22                  hundred.    So when the arrests were made I assumed that  
23                  the narcotics had been taken from the Property Clerk's  
24                  office.    I found it very hard to believe that anything had  
25                  disappeared from the load that we had found.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A No, sir, I don't know what county he comes from.

MR. HERWITZ: No further questions.

MR. JAFFE: Your Honor, what I was going to ask is in evidence.

MR. HERWITZ: Just one further question.

BY MR. HERWITZ:

Q Did Mr. Daly sit down with you and our wife and have tea on one of those occasions?

A No.

MR. HERWITZ: Those are the kind of questions I am asked to ask.

THE COURT: Anything else?

Thank you, Mr. Sheridan. You may step down and be excused.

(Witness excused.)

MR. JAFFE: Your Honor, the Government calls Gerald Hall.

--

1 to it on that additional ground.

2  
3 THE COURT: What is the evidence that proves  
4 that Daly owned or had in his possession the narcotics?

5 MR. JAFFE: He told Carl Aquiluz that the  
6 three defendants that he arrested at the airport were  
7 flaked by him. Mr. Aquiluz has so testified. One of  
8 these three defendants is waiting outside to testify, and  
9 he will so testify, and the other evidence of it is that  
10 he charged these people with criminal charges. I have  
11 the records here. He charged them with possession of  
12 drugs that they did not have.

13 THE COURT: What is the admission that they  
14 did not have it? We now have gotten into the trial of  
15 Banderas-Torres. So now we are going to try out whether  
16 they have the narcotics or not.

17 MR. JAFFE: The evidence is a statement made  
18 to Aquiluz that he flaked them, and the evidence is a  
19 statement by Torres that he had no narcotics and when he  
20 asked for his money back he told him, "No money; cocaine."  
21 That is the evidence. It shows Mr. Daly in possession  
22 of the narcotics and it shows the use that is made of those  
23 narcotics.

24 MR. HEPWITZ: If your Honor please, there were  
25 three men who were apprehended. Mr. Torres' testimony



1  
2 THE COURT: All right, let's get the jury,  
3 Mr. Clerk.

4 (The jury entered the courtroom.)

5 THE COURT: Members of the jury, we appreciate  
6 your patience in bearing with this delay. You must take  
7 my word for it that matters over which we had no control  
8 prevented our starting until now, and I am terribly sorry  
9 that it happened, but occasionally despite all our efforts  
10 it does happen.

11 Now, members of the jury, as you may remember,  
12 yesterday the Government offered or began offering evidence  
13 of an arrest incident at Kennedy Airport said to involve the  
14 defendant Daly, but a different matter from the four  
15 charges here on trial.

16 For reasons of law with which the jury have  
17 no concern I have concluded that this evidence is not  
18 admissible. The jury should therefore disregard it, and  
19 in the light of my ruling the Government has withdrawn  
20 Exhibits 19, 20, 21 and 22.

21 All right, Mr. Jaffe.

22 Do we need the witness?

23 MR. JAFFE: Yes.

24 THE COURT: All right, the Clerk has gone to  
25 get him.

1           you saw Mr. Daly, or the next day when you saw him again?

2           A       He had a fair amount of personal property,  
3           including correspondence. One piece in particular was  
4           his antecedent history detailing his education, police  
5           service, and so on and so forth.  
6

7           Q       Had that been written out in his hand?

8           A       This was my understanding, yes.

9           Q       And was it given to you?

10          A       Yes.

11          Q       I show you Exhibit 26 for identification which  
12          has previously been marked 35148, and which is now Exhibit  
13          26 for identification, and ask if you can identify this  
14          document?

15          A       Yes, that is the document.

16          Q       Is that a two-page document, sir?

17          A       It is, yes.

18          Q       And the writing that appears thereon, is any of  
19          that in your hand?

20          A       No.

21          Q       That is writing you were told was in Mr. Daly's  
22          hand?

23          A       Correct.

24          Q       Did he identify the document to you?

25          A       He may have done; I don't recollect, sir.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Did he tell you where he had the approximately 15,000 pounds?

A I don't recollect where he said he had it.

Q Did you have any further conversation?

A Yes, I did.

Q Do you recall what you said and what Daly said?

A He said that he wanted to tell us a little bit about it, and he explained that he was working with a man called Joe, Joe Novoa, and that they were keeping observations in New York. This was the winter.

They saw a car which had Florida plates, and they thought it was a little bit strange because the occupants of the car were dressed in light clothes.

2 They followed the vehicle out of their police district to some premises, and followed the people into the premises where they found a quantity of drugs.

I asked him what the quantity was, and he said 105 kilograms.

And he went on that he thought it was funny because the people who had been arrested jumped their bail.

And I queried this with him, and he said that the Feds - which I assume were the FBI - were involved, and that apparently the Feds were involved as regards to the occupants prior to the arrest, although they didn't

1 know about it until afterwards.

2 Q Do you recall any further conversation?

3 A Yes. Detective Constable Bennie asked Mr.  
4 Daly whether he knew four people, Stefania, Wooster, Egan  
5 and Aguiluz; and he replied that he did, because Mr. Daly  
6 and they were all employed by the Narcotics Bureau of the  
7 New York City Police Department.  
8

9 He went on that he knew that Joe Novoa was  
10 doing time, and that he had heard this from Joe's wife by  
11 of a letter. He didn't know what had happened to the  
12 others.

13 He said that Joe's wife had explained that the  
14 trial of Joe was a farce, it was like a circus; that every  
15 time money was mentioned somebody in the back of the court  
16 would gesticulate, holding fingers up to indicate the  
17 amount involved.

18 D.C. Bennie asked him about the loss of the  
19 drugs from the property store, was it the French Connection?

20 And he replied that it was similar, and that he  
21 thought it strange that the man in charge of the property  
22 store had not been charged. He couldn't understand how  
23 anybody could take drugs out of the property store without  
24 that person knowing.

25 I asked him why; and he said that, "Not only



1 ssl0

2 do you have to sign for them but you also have to show  
3 your shield."

4 He went on that he could only assume that Carl,  
5 Carl Aguiluz, had turned informant.

6 Q Was that in relation to any specific question  
7 about Aguiluz turning informant?

8 A Not to my recollection. As far as my recol-  
9 lection is concerned, it followed on from his comments about  
10 the loss of drugs from the property store.

11 Q Did anybody ask Mr. Daly why he was thinking  
12 that Aguiluz had turned informant?

13 A Yes, I believe I did; and he explained that  
14 Carl Aguiluz was involved in an observation on a restaurant  
15 which he understood that the FBI were also interested in.  
16 He said that the restaurant owner was eventually arrested,  
17 and he believed that the owner was either a relative or a  
18 close friend of Carl's, and that somehow Carl had become  
19 involved in this with the FBI.

20 Q Did he say FBI or did he say "Federal people"  
21 or did he say some particular drug agency, or don't you  
22 recall?

23 A "Feds" was the expression.

24 Q Were those his exact words, Feds?

25 A Feds.

1 sls

2 He went on that he thought some very funny  
3 had happened, in particular with regard to a man called  
4 Joe Ananciato who was engaged in an observation in which  
5 the Feds were interested in. Ananciato had apparently  
6 been found shot --

7 THE COURT: Is all this relevant? I don't see  
8 that these last remarks as having any relevancy to the case  
9 on trial.

10 MR. JAFFE: If the Court wishes we can strike  
11 out the remarks about Ananciato, your Honor.

12 THE COURT: Yes, I should think so.

13 Q Mr. Atkins, directing your attention back for a  
14 moment, you said you had a conversation with Mr. Daly, or  
15 as part of that conversatioi Mr. Daly said something about  
16 Carl being called by the Feds?

17 A Carl being what?

18 Q You said that he talked to yu about this fellow  
19 Carl Aguiluz being called by the Feds.

20 I think you said that to us. Do you recall  
21 if he said anything to you about Aguiluz and the Federal  
22 people?

23 A In relation -- that the Feds were questioning  
24 Carl in relation to the matters the Daly was involved in  
25 as regards extradition.



1 Q Did he say anything about what he thought  
2 Aguiluz was doing with the Feds?  
3

4 A As an informer.

5 Q Now did there come a time when you had a conver-  
6 sation with Mr. Daly when you asked him whether or not he  
7 was aware that the American Authorities might be after him?

8 A Yes.

9 I expressed some surprise that he, in fact, came  
10 to England.

11 Q Do you recall what you said to him?

12 A Not verbatim, no.

13 Q Well, tell us in substance what you said?

14 A I thought it was strange that he should come to  
15 England when he must have known that he could be arrested.

16 Q Did he respond to you?

17 A Yes, he did. He said something to the effect  
18 that he realized that they would be watching the Mexican  
19 border --

20 MR. HERWITZ: If your Honor please, I indicated  
21 previously I object to this testimony, for the reasons I  
22 previously stated.

23 THE COURT: Yes. Overruled.

24 A He realized that they would be watching the  
25 Mexican border, so he decided to fly to Ireland. From

1 Ireland his reason for coming to England was concern over  
2 a sister whom he had not seen for 18 years, and he thought  
3 that she might be in some kind of trouble.  
4

5 On arrival in England he managed to locate his  
6 sister and found that everything was all right.

7 Q Now did there come a time when you and Daly and  
8 Mr. Bennie had any conversation about the charges pending  
9 against him?

10 A Yes. Mr. Daly wanted to know how much we knew  
11 about it, and Detective Constable Bennie read to him a  
12 resume of the indictments.

13 And his reply to that was to the effect "They  
14 must want me pretty badly. I don't want to go back to New  
15 York; I should have stayed in Ireland."

16 MR. HERWITZ: For the reasons previously stated,  
17 I object to this and move to strike it out.

18 THE COURT: I will overrule the objection and  
19 deny the motion.

20 MR. JAFFE: May I have just a moment?

21 THE COURT: Yes.

22 I am afraid we will have to stop here for lunch.  
23 We will have to vary our hours a little bit. I have had  
24 a matter come up.

25 Madam Foreman, ladies and gentlemen of the jury,



1 mp2

Atkins-direct

2 A Yes, he was taken to the Bowes Street Magistrate  
3 Court.

4 Q Were you present?

5 A Yes, I was.

6 Q Will you tell the Court what, if anything,  
7 occurred?

8 MR. HERWITZ: May I have a continuing objection  
9 on the grounds previously stated?

10 THE COURT: Yes.

11 A Mr. Daly was presented to the Magistrate in order  
12 that he be remanded. The Magistrate asked Mr. Daly if he  
13 was applying for bail, to which the reply was, "Yes."  
14 I then gave reasons opposing the granting of bail, those  
15 reasons being the offenses were of a serious nature and  
16 that my understanding of the situation was that Mr. Daly was  
17 a holder of an American passport, but at the same time was  
18 entitled to dual nationality, having been born in Ireland.  
19 Therefore, he could obtain Irish documents and leave the  
20 country.

21 Q Was there anything that occurred thereafter?

22 A In the course of conversation between the  
23 Magistrate and Daly, Mr. Daly said that he would go back  
24 to Ireland.

25 Q Was that in response to any question?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Yes.

A At the time I was working with him the nationality of the people that we were working on were mainly Spanish or South Americans. I considered them Spanish. They spoke Spanish.

Q Do you speak Spanish?

A No, I don't.

Q Do you understand it?

A No, I don't understand it.

Q Now, Sergeant Stefania was on the stand today. Now was he your supervisor at that time?

A At one time, yes.

Q Now it has been testified to here that on April 14, 1970 you and Aguiluz and Novoa tailed some people to Jersey, and after certain things had happened they came back from New Jersey.

Do you remember that incident?

A I remember because it was, you know --

Q I didn't ask you why you remembered.

A Yes, I remember vaguely the incident, yes.

Q Now it has been testified here that after these people were arrested and taken to the station house, that something happened at the station house which was testified to here, that you and Aguiluz went to a building up at 19th



1                   Street; is that right?    You heard that testimony?

2                   A        I have heard that testimony, yes.

3                   Q        Is that right?    Did you go to a building on  
4                   19th Street?

5                   A        Yes.

6                   Q        You know, I am talking about the so-calle  
7                   hundred kilos?

8                   A        Yes, Mr. Herwitz --

9                   Q        Don't volunteer.

10                  A        I am not volunteering.    I just wanted to make  
11                  it clear that I understand and I realize the facts you are-  
12                  telling me, but it is not altogether from my memory.  
13                  I read an awful --

14                           MR. JAFFE:   Excuse me, I have an objection.

15                           May I approach the bench?

16                           THE COURT:   All right.

17                           (At the bench.)

18                           MR. JAFFE:   Your Honor, if he claims he is  
19                           incompetent to stand trial then we ought to have had a  
20                           hearing a long time ago to see whether or not he was  
21                           competent to stand trial, but to sit there and say,  
22                           "I don't understand," it seems to me is not responsive to  
23                           any questions posed --

24                           THE COURT:   What is it you want me to do?  
25

1 sls

2 MR. JAFFE: I would like Mr. Herwitz to ask  
3 questions and --

4 THE COURT: He has been asking questions.  
5 He just doesn't get answers.

6 MR. JAFFE: Very well, your Honor.

7 THE COURT: All right, let's go on.

8 (End of bench conference.)

9 THE COURT: I think perhaps this would be a  
10 good opportunity to take a few minutes' recess.

11 Suppose I excuse the ladies and gentlemen of  
12 the jury for a few minutes.

13 (The jury left the courtroom.)

14 MR. HERWITZ: If your Honor please, I would  
15 like to put a brief statement on the record --

16 THE COURT: First I wanted to address Mr. Daly.

3 17 Mr. Daly, your lawyer has brought out the fact  
18 that you had an automobile accident.

19 THE WITNESS: Yes, sir?

20 THE COURT: He has brought out the fact that  
21 you think it has affected your memory.

22 Now, when he asks you a question, if you under-  
23 stand the question, just answer it either yes or no or "I  
24 can't remember", and don't give any further explanations.

25 THE WITNESS: Thank you, your Honor, I will.



1                   THE COURT: Now, is there anything else, Mr.  
2 Jaffe, that you think I can appropriately say?

3                   MR. JAFFE: As long as he abides by what you  
4 say, I think that's the best you can do, your Honor.  
5

6                   MR. HERWITZ: If your Honor please, I want to  
7 make the statement.

8                   I had said before we began this morning that  
9 I intended to rest at the end of the Government's case.  
10 And when I made that statement that was my intention.

11                   My intention was changed, your Honor, as a  
12 result of the redirect examination of the witness Stefanie,  
13 which brought out, respectfully, other alleged immoral or  
14 improper actions.

15                   In view --

16                   THE COURT: You mean the Airport case?

17                   MR. HERWITZ: Airport, and he said, he testified  
18 that money was shared, and so on.

19                   THE COURT: As far as the Airport case is con-  
20 cerned, I ruled that out, and I am not going to permit you  
21 to go into it.

22                   MR. HERWITZ: I have no intention to, your  
23 Honor, but my reason for saying I was not going to call  
24 Mr. Daly was I didn't want to open any doors.       The doors  
25 having been opened and statements having been made, which,

1p

122a

CLERK'S  
COPY

882

UNITED STATES OF AMERICA

vs.

PETER DALY.

RETURN TO COURT REPORTERS  
ROOM 803 FOR FILING

New York, June 6, 1975;

9.30 a.m.

Trial resumed.

- -

(In the robing room.)

THE COURT: Yes, Mr. Herwitz?

MR. HERWITZ: Your Honor, I just wanted to make a little record, quite honestly, for my own and Mr. Schofield's professional reputation.

I want to state on both our behalfs that neither of us were aware before the defendant took the stand that he was suffering from amnesia to the extent that he testified to. Had we been aware of that fact -- if as a result of our speaking to him we had been aware of that fact we would have brought that to your Honor's attention and perhaps ask your Honor to appoint a physician to determine whether or not he was capable of standing trial. We were not aware of that fact.

I was not aware of the fact that he was going to testify as he did. I must confess that in these cases, these types of cases, I do not make a practice of extensive preparation of the witness.



2 Before he took the stand I asked him whether he  
3 was guilty. He said no. I said, "In my opinion, if you  
4 are not guilty you ought to get up there and say it."

5 And that's pretty much what my preparation was,  
6 your Honor.

7 THE COURT: Well, I haven't seen the slightest  
8 evidence that you and Mr. Schofield are guilty of anything  
9 unprofessional. Whether to take the stand or not is  
10 essentially a difficult decision to make, and I am sure  
11 you gentlemen, after giving your best advice, leave it up  
12 to the defendant.

13 MR. SCHOFIELD: Well, that is exactly what happen-  
14 ed, your Honor.

15 MR. HERWITZ: Right. I am putting this on the  
16 record not because I have any indication that we have not  
17 acted properly, but for the future record, your Honor.

18 THE COURT: Of course.

19 MR. HERWITZ: Now, there is one other thing, if  
20 I may. This is somewhat related.

21 He was retired from the Police Department on  
22 a disability. He was not retired on a disability based  
23 on amnesia --

24 MR. JAFFE: Sir?

25 MR. HERWITZ: He was not retired on a disability  
based on amnesia.

Aguiluz, supposedly, according to Mr. Herwitz, is the only person to testify to an agreement to sell narcotics. Well, there are a few problems with that. The first one, this man said yesterday it could happen. Yesterday afternoon you sat here and he said, "It could happen; I do not remember."

We will deal with that in a minute. But how about Boutureira? How about Ramos? How about the Taft Hotel, where Boutureira says he was in the place at the proximate time that Daly is supposed to be there.

Let him explain it. And then I think the most important thing to let him explain, he said this is a case about a conspiracy between Aguiluz and Boutureira to obtain leniency for their derelictions by passing this off to Daly. That is an outrageous argument. But let him explain it to you, because if Aguiluz and Boutureira are conspirators, the government has to be a co-conspirator, because we put them on the stand. And if you believe for one minute that we made up a story, put on witnesses and conjured up the evidence just to convict this defendant, then when the Judge gets done giving you the law, you don't have to get up at all, you don't have to deliberate for two seconds, but if you believe that you just sit right there and have Madam Forelady get up and say,



1 "We find him not guilty," because we told you in the  
2 beginning the government wants a fair trial for him and  
3 for the public, nothing more, nothing less.

4 You might also consider in this regard how if  
5 a conspiracy is there, you will recall that Boutureira  
6 and Ramos were sentenced by a Judge in this court. Is he  
7 supposedly a co-conspirator also? Is he supposed to be in  
8 on this, too?

9 There are a few other things you should ask him  
10 to explain, ladies and gentlemen, but we will move along,  
11 because I want to review the facts. That is what is  
12 important, not these accusations and not these arguments  
13 about this fellow lied and that fellow lied, because if  
14 there is one person who took the stand that had a failure of  
15 recollection, it was not Aguiluz, it was not ~~not~~ Boutureira,  
16 it was not Ramos, it was not Stefania, it was not the  
17 two constables from London; it was Peter Daly.

18 Ask Mr. Herwitz to explain to you how it was that  
19 two weeks before that man went to Ireland he called up  
20 Aguiluz and said, "The indictment is coming down; you better  
21 be careful." Explain how come he ran away to Ireland  
22 and deserted his family.

23 Explain how come when he was asked questions with-  
24 out even knowing the charges against him, when he was  
25

2       who were otherwise available, they could have been called by  
3       either side.

4               The government contends that the facts thus far,  
5       as explained to you, as you have heard from the witness  
6       stand and you see from the documents, establish those  
7       transactions took place.

8               2 kilograms of heroin to Papadakis; 1 kilogram  
9       of heroin to Nieves; 2 kilos of cocaine to Cansio, and he  
10      is not charged with selling the cocaine. The first count is  
11      the 5 kilos altogether. The next 3 counts are the three  
12      separate sales. All the money went into his pocket, one-  
13      quarter of \$54,000.

14              And in addition to that dishonest cop you hear  
15      the testimony, there was \$5000 taken from the April 15th  
16      defendants; \$5000 from an apartment over in Brooklyn.

17      When Aguiluz got back he got his share from him in addition  
18      to whacking up the \$1200 that had been taken on the night of  
19      April 15th.

20              So this man stole with his partners and sold  
21      not only heroin and cocaine; they also stole money from  
22      the defendants who they arrested, and actually from whom they  
23      stole those 5 kilos, and then you heard the testimony that  
24      they negotiated to sell out the case.     \$150,000 to sell  
25      out that case.     Law-enforcement officers. And then they



1  
2 divided up \$5000 on that. That was good faith money from  
3 some other deal they had done.

4 Did it bother him? Did he report it to his  
5 superiors? I suppose if the question were posed he  
6 would answer like everything else, "It could have happened,  
7 but I don't know."

8 Now, one other thing to think about, we are  
9 trying to think about whether this person had the motive  
10 or the intent or wilfulness to do the acts charged, I am  
11 going to repeat it once again, are the acts that you heard  
12 testified to about flaking.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 dealing with narcotics, the situation on the streets of  
2 New York may have been different.

3 This defendant is absolutely entitled to a  
4 fair trial; the government is also entitled to a fair  
5 trial. Innocent men should not go to jail; guilty men,  
6 ladies and gentlemen, should not go free.

7 The government submits that on the facts and  
8 evidence in this case there is overwhelming proof beyond  
9 a reasonable doubt that Peter Daly is guilty as charged in  
10 Counts 5 through 8. Thank you.

11 THE COURT: Madam Foreman, ladies and gentlemen  
12 of the jury, we will take a few minutes recess.

13 (Recess.)

14 THE COURT: Mr. Herwitz, will you address the  
15 jury.

16 MR. HERWITZ: If the Court please, Mr. Jaffe,  
17 Miss Freeman, ladies and gentlemen of the jury:

18 I and you have just heard what I think is one  
19 of the most brilliant, organized summations ever delivered  
20 in this courthouse. Mr. Jaffe said we have not tried cases  
21 together before. Obviously, he has not been around  
22 as long as I have. On the basis of my experience with  
23 Mr. Jaffe in this case, I assure you that there is nothing  
24 that I am going to say, nothing that I said in the course  
25



1 of this trial by which I intended for one minute to suggest  
2 that Mr. Jaffe or his associates have done anything in this  
3 case that was not a hundred per cent above board and in  
4 accordance with the best ethics of our profession.  
5

6 I am not just saying that in order to ingratiate myself  
7 with you or with him; it is the fact.

8 I am a little distressed that Mr. Jaffe felt called  
9 upon to say that when I get up to address you I will try  
10 to confuse you. I assumed that he is saying that on the  
11 basis of his experience with me in this trial; and if on  
12 the basis of his experience with me in this trial he  
13 thinks that I am going to get up and confuse you, I hope  
14 you don't have that impression and I hope there is not  
15 anything that I have done in the course of this trial to  
16 give you that impression. It certainly was not my in-  
17 tention.

18 I said when I first addressed you in this case  
19 that most of the facts were conceded, and I will say to  
20 you now that there is a very large part of what Mr. Jaffe  
21 said in his summation with which I am in full agreement.

5 22 I don't take second place to Mr. Jaffe in my  
23 hatred for corruption; I don't take second place in my  
24 abhorrence and disgust with anybody who will have anything  
25 to with the sale or distribution of narcotics.

1  
2 But there is a flaw in the argument that Mr.  
3 Herwitz made and that is that Salvador Boutureira and  
4 Frank Ramos have already pleaded guilty to the facts of  
5 this case and they were sentenced by Judge Wyatt. Carl  
6 Aguiluz has already agreed to plead guilty to the facts of  
7 this case and has already told you, ladies and gentlemen,  
8 that he faces a two to ten year jail term, and that his  
9 cooperation would be brought to the attention of the  
10 Court.

11 Now, I told you when I first began to speak that  
12 the government calls witnesses from the cesspool of crime that  
13 we are dealing with. I told you, and I say once again,  
14 you ladies and gentlemen assess the facts of this case,  
15 that is your job. I said before and I say again if any one of  
16 you jurors charged with the responsibility that you are  
17 charged with, if any one of you thinks for a moment that  
18 this government and this court participated with any of  
19 these people in a frame job to convict Peter Daly, as  
20 Mr. Herwitz brought out on his summation, for some other  
21 charges in other indictments, then when the Judge is done,  
22 sit there and acquit him. Peter Daly is charged with  
23 narcotics transactions, and the evidence in this case  
24 overwhelmingly establishes what he did.

25 Carl Aguiluz gave a lot of explanations. And if



Why shouldn't he?"

Now, ladies and gentlemen, as the case is now before you, and the summations of both attorneys, as I see Mr. Herwitz's arguments, everything that Boutureira and Ramos and Aguiluz say is credited, because, ladies and gentlemen, he never attacked one thing; he never pointed out one inconsistency. He stuck to that same theory he opened on: it's a conspiracy to sink Peter Daly.

It's just implausible. You can't explain away Sheridan. You can't explain away Stefania. But the thing you can't explain away most is Peter Daly. Peter Daly's testimony, Peter Daly's statements and Peter Daly's handwritten piece of paper where he wrote in that infrequent moment of truth "230 pounds."

Now, you, the jury, have to decide what happened. It's up to you, the jury, to make the decision as to guilt or innocence. But, ladies and gentlemen, as we said before, this case involves a corrupt cop who the evidence shows stole and sold a huge amount of narcotics and put it out on the streets of New York and put the money into his pocket, and had the audacity at the same time to steal the money from the people they stole the junk from, and to negotiate for money from the lawyers who represented those people, and if you don't believe that and you want

1p

some corroboration, there are the court records of the attorneys who represented those defendants. Ask for them. The name is Santangelo, right on the bottom.

They also had the audacity to go to the apartment in Brooklyn and steal some more money from these same defendants.

It's all wrapped up in one ball of wax. And then that same person had the audacity to come into this room, get on that stand and talk about amnesia as he fenced back and forth as he was questioned to make sure he was never caught.

Ladies and gentlemen, there is no cause for sympathy in this case and there is no cause for a doubt based on reason in this case. I submit to you, ladies and gentlemen, that the evidence in this case is overwhelming, and that evidence establishes that this man as he appears in this picture and appears at that table and the picture here are not very different. The image hasn't changed one iota, and the character on the stand when he spoke hasn't changed one bit. The evidence establishes that this man is guilty as charged in counts 5 through 8 of this indictment.

Thank you very much.

THE COURT: Now Madam Foreman, Ladies and



C H A R G E

WYATT, J.

THE COURT: Madam Foreman, Ladies and Gentlemen  
of the Jury:

We are now at the final stage of this trial.  
My observation has been that you have not only been generally  
punctual, but that you have followed the testimony and other  
evidence with careful attention. You will remember how I  
have emphasized that your decision must be based solely on  
the evidence taken as a whole and my instructions as to the  
law.

This case is now about to be submitted for your  
final decision as to the issues of fact, and, of course,  
your decision as to those fact issues determines whether  
your verdict as to each charge against the defendant is  
guilty or not guilty.

In making your decisions you act as ministers of  
justice and you discharge an obligation of citizenship which  
it is not too much to call sacred. In making your decisions  
you should adopt an attitude of complete fairness, complete  
impartiality. You should appraise the evidence calmly  
and objectively and without any bias or feeling for or against  
the government or for or against the defendant.

In this connection, I should add that the fact

1  
2 recollection which, as I have said, controls.

3 I also emphasize that questions asked of wit-  
4 nesses by counsel or by the Court are never evidence. It  
5 is only the answer which is evidence and never the question.

6 You are not to assume, ladies and gentlemen of  
7 the jury, that I, as the presiding judge, have any opinion  
8 whatever as to the guilt or innocence of the defendant or the  
9 truth or falsity of any of the charges. In this connection  
10 you heard me occasionally ask questions. You are not to  
11 attribute any significance to the fact that I may have  
12 asked a question. The object of such questions was solely  
13 to make something or attempt to make something clearer for  
14 you and was never intended to indicate any opinion on my  
15 part.

16 Similarly, the fact that the Court made rulings  
17 during the course of the trial is not to be taken by you as  
18 any indication that the defendant is believed by the Court  
19 to be guilty or to be not guilty. These rulings made by  
20 a judge during the course of a trial deal with matters of  
21 law with which, as I have said, the jury has no concern.  
22 I should also say that counsel, whether for the government  
23 or for the defendant, not only have a right but it is their  
24 duty to press whatever legal objections there may be to the  
25 admissibility of evidence.



1  
2 I will also remind the jury that what is said  
3 between the Court and counsel the jury should disregard.  
4 In this connection you will realize that judges are only  
5 human. I may have been, have been impatient from time  
6 to time with counsel. It is a fault on my part. I  
7 ask you to forgive and disregard it and, certainly, to  
8 draw no inference against the side to which my impatience  
9 may have been directed.

10 Counsel on both sides have been able and devoted,  
11 and their zeal on behalf of their respective clients is  
12 commendable.

13 Now, members of the jury, before we consider the  
14 charges in the indictment some further preliminary in-  
15 structions should be given. You will recall that some  
16 persons named in the indictment are not here on trial.  
17 This has nothing whatever to do with the charges you are  
18 to consider against the defendant here on trial. You will  
19 only consider the charges submitted to you against the  
20 defendant here on trial, Mr. Daly.

21 Guilt in our system is personal. The guilt  
22 or innocence of the defendant on trial before you, Mr.  
23 Daly, must be determined solely upon the evidence or lack  
24 of evidence as to him. The case of a defendant stands  
25 or falls upon the proof or lack of proof of the charge.

or charges against him and not against somebody else.

The indictment, as I have reminded you before, is merely an accusation. It is a charge. It is not evidence and it is no proof of the guilt of any defendant. You should not give any weight to the fact that an indictment has been returned. The defendant has pleaded not guilty. The government has the burden of proving the charges against him beyond a reasonable doubt. It is a burden which never shifts and it remains upon the government throughout the trial.

A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusations contained in the indictment. The presumption of innocence remains in favor of the defendant until such time if, as and when you are satisfied that the government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt. And, of course, in weighing the evidence, members of the jury, to determine whether there has been proof beyond a reasonable doubt, you should consider the quality and the substance of the evidence and not the quantity or the number of witnesses.

Now we have come to that often used expression "reasonable doubt." What is a reasonable doubt? We say that it is a doubt founded on reason and arising from



the evidence or lack of evidence. It is a doubt which a reasonable person has after carefully weighing the evidence. It is a doubt which is substantial and not shadowy. A reasonable doubt is one which appeals to your reason, your judgment, your common sense, your experience. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. A reasonable doubt is not a vague, speculative, imaginary doubt, but such a doubt as would cause prudent persons to hesitate before acting in matters of importance to themselves.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. If that were the rule few men or women however guilty would ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which is not by its nature capable of being proved to a mathematical certainty. In consequence the law in a criminal case is that the guilt of a defendant must be proved beyond a reasonable doubt and not beyond all possible doubt.

Now, members of the jury, the indictment here is based on events said to have occurred in 1970. Since that time there have been some changes in the federal narcotics laws, but these changes are of no significance in this case. With exceptions for medicinal use,

not here applicable, it was unlawful at all relevant times to import any narcotic drug into the United States. Heroin and cocaine are narcotic drugs which it was thus unlawful to import.

It was also unlawful knowingly or fraudulently to receive, conceal, buy, sell or facilitate the transportation, concealment or sale of heroin or cocaine which had been imported into the United States knowing that such heroin or cocaine had been imported into the United States contrary to law.

It was provided in the law that if a defendant is shown to have had possession of a narcotic drug, this is sufficient evidence to authorize conviction unless other evidence from any source explains the possession to the satisfaction to the jury.

The indictment as returned by the grand jury contained a number of separate counts. A count, as I explained at the beginning, is a separate section of an indictment charging a separate offense. For reasons with which the jury need have no concern, the defendant Daly is being here tried on four counts, namely, counts 5 through 8.

Now I am going to give to Madam Foreman at the end of these instructions for your convenient use during your deliberations a copy of the four counts of the indict-



ment here on trial, and also a copy of a memorandum for use in returning your verdict so that you will be able to see precisely the counts which are before you.

Now, the separate charges in the indictment can be better understood if we first give a rough outline in order of time sequence of the statements - averments the legal word is - in the indictment as later amplified by the government.

Defendant, Peter Daly, with Joseph Novoa and Carl Aguiluz were New York City police officers assigned to a special narcotics unit called Special Investigation Unit, or SIU. One or more of them, Daly, Novoa, Aguiluz, seized on April 15, 1970, a large quantity of heroin and cocaine found in an apartment on West 19th Street. Instead of turning over to a law-enforcement agency all of the drugs so seized, Novoa, Daly and Aguiluz kept back 5 kilograms of drugs, which were later sold for their personal profit.

Salvador Boutureira - who can be called Sal for short - was an intermediary in the sale of the 5 kilograms, as was also Frank Ramos, who was named as a defendant in this indictment but who was severed after he pleaded guilty to an information.

Now, Demetrios Papadakis, called "Jimmy the Greek", and Joaquin Nieves were purchasers or acting for purchasers

of amounts of heroin aggregating 3 kilograms. The sales to them, Jimmy the Greek and Nieves, had been arranged through Sal Boutureira and Ramos.

Now, this is only an outline of the charges in the four counts of the indictment here on trial, and as amplified by the government.

The defendant by his plea of not guilty has denied these charges.

It is for you alone to determine whether the charges have been proved beyond a reasonable doubt. I give you this outline simply as an aid and a background for your consideration of the separate counts of the indictment to which we now turn.

As I said, there will be submitted to the jury four counts.

Count 5 reads as follows:

"The grand jury further charges:

"On or about April 15, 1970, in the Southern District of New York" -- and Manhattan Island, New York County, is, of course, in the Southern District -- "Peter Daly and Joseph Novoa, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately 5 kilograms



1  
2 of heroin hydrochloride and cocaine hydrochloride, after  
3 the said narcotic drugs had been imported and brought into  
4 the United States contrary to law, knowing that the said  
5 narcotic drugs had been imported and brought into the  
6 United States contrary to law."

7 Now, this count, count 5, is related to the govern-  
8 ment's evidence that Daly, Aguiluz and Novoa took 5 kilograms  
9 of drugs from the quantity seized at 210 West 19th Street,  
10 and instead of turning them in to the Police Department sold  
11 them through Boutureira.

12 Now, count 6 reads as follows:

13 The grand jury further charges:

14 "In or about May, 1970, in the Southern District  
15 of New York Peter Daly, Joseph Novoa, Frank Ramos,  
16 Demetrios Papadakis, a/k/a 'Jimmy Pappas,' a/k/a,  
17 'Jimmy the Greek, and Elissa Possas, the defendants,  
18 unlawfully, wilfully and knowingly did receive,  
19 conceal, buy and sell, and facilitate the transporta-  
20 tion, concealment, purchase and sale of narcotic  
21 drugs, to wit, approximately 1 kilogram of heroin  
22 hydrochloride after the said narcotic drugs had been  
23 imported and brought into the United States contrary  
24 to law, knowing that the said narcotic drugs had  
25 been imported and brought into the United States

contrary to law."

Now, this count 6 is related to the government's evidence about the kilogram of heroin which Boutureira says he put in the parking lot and about the man on the motorcycle in the leather jacket after the transactions in the Cafe Madrid where he said Jimmy the Greek was present.

Now count 7 reads as follows:

"The grand jury further charges:

"In or about May and June, 1970, in the Southern District of New York, Peter Daly, Joseph Novoa, Frank Ramos, Demetrios Papadakis, also known as 'Jimmy Pappas,' also known as 'Jimmy the Greek', and Elissa Possas, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and seal and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately 1 kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law."

Now, this count 7 is related to the government's evidence that 1 kilogram of heroin was sold through Ramos to Jimmy the Greek, and there is evidence, you remember,



1p

about the key to the locker in the subway station.

Now, count 8 reads as follows:

"The grand jury further charges:

"In or about May and June, 1970, in the Southern District of New York, Peter Daly, Joseph Novoa, Frank Ramos and Joaquin Nieves, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation concealment, purchase and sale of narcotic drugs, to wit, approximately 1 kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law."

Now, this count 8 is related to the government's evidence that 1 kilogram of heroin was sold through Ramos to Nieves, and there was evidence about Boutureira putting the heroin on the driver's seat of a car; that Nieves took the heroin and put it in a newspaper and gave it to one of three girls sitting in the Cafe Madrid.

Now, members of the jury, I have related some of the government's evidence as to the separate counts simply to help you, the jury, in considering these separate counts. I do not mean to imply, of course, any belief as

1  
2 to whether you should or should not accept the government's  
3 evidence. That is entirely up to you, the jury. I have  
4 been simply trying to relate the evidence to the separate  
5 counts.

6 Now, these four separate counts as just read to  
7 you all involve the same principles of law. The charges  
8 are based upon Sections 173 and 174 of the United States Code,  
9 usually referred to as the Federal Narcotics Control Act.  
10 The pertinent part of these sections provide as follows:

11 It is unlawful to import or bring any narcotic  
12 drug into the United States except such amounts as the  
13 Commissioner of Narcotics finds to be necessary to provide  
14 for medical and legitimate uses. Whoever receives, conceals,  
15 buys, sells, or in any manner facilitates the transportation,  
16 concealment or sale of any such narcotic drug after being  
17 imported or brought in, knowing the same to have been im-  
18 ported or brought into the United States contrary to law,  
19 shall be guilty of an offense.

20 You see, the statute is not limited to the sale  
21 of illegally imported narcotics. It is a violation of  
22 law if a person receives or conceals or buys, or in any  
23 manner facilitates the transportation, concealment or sale  
24 of narcotic drugs.

25 "Facilitate" means to make easy or less difficult,



2 to aid, to assist in furthering or advancing in any meaning-  
3 ful way one or more of the acts prohibited by the statute  
4 which I just read to you.

5 The government does not have to prove that a  
6 defendant committed each of the condemned acts. Under  
7 each of these four counts it is sufficient if the government  
8 proves that a defendant knowingly committed any one of the  
9 prohibited acts.

10 "Knowingly and wilfully" means with a specific  
11 intent to violate the law. That is, with a bad or evil  
12 purpose, to disobey or to disregard the law, and deliberately,  
13 not by accident or mistake or some other such innocent reason.

14 To return a guilty verdict under each of these  
15 counts, 5 through 8, you must be satisfied beyond a reason-  
16 able of the following three essential elements:

17 First, that on or about the dates set forth  
18 the defendant either received or concealed or sold, or in  
19 any manner facilitated the transportation, concealment or  
20 sale of heroin or cocaine.

21 Second, that the substances dealtwith were, in  
22 fact, heroin or cocaine. This need not be proved by samples  
23 nor by tests of chemists. It may be proved by circumstant-  
24 ial evidence from which you may find beyond a reasonable  
25 doubt that the substances were, in fact, narcotic drugs.

1  
2 The third essential element which you must find  
3 in order to authorize a conviction is that the heroin or  
4 cocaine was unlawfully imported into the United States  
5 and that the defendant Daly had knowledge of such unlawful  
6 importation.

7  
8 It may occur to you, members of the jury, that  
9 no direct testimony has been offered that any drugs were  
10 unlawfully imported or that the defendant knew of such  
11 unlawful importation. To establish this vital element of  
12 illegal importation and knowledge on the part of the  
13 defendant Daly, the government relies on another provision  
14 of the Federal Narcotics Control Act, which provision is  
15 that if a defendant is shown to have had possession of a  
16 narcotic drug, then such possession shall be deemed suf-  
17 ficient evidence to authorize conviction unless the evidence,  
18 from whatever source, explains the possession by the de-  
19 fendant to the satisfaction of the jury. The jury is  
20 authorized to infer the knowledge by a defendant of the  
21 illegal importation of the narcotic drugs, but is also  
22 authorized not to infer such element. This means that if  
23 you should find that the defendant Daly was in possession  
24 of heroin or cocaine, you would be authorized to convict  
25 in the absence of a satisfactory explanation in the  
evidence, provided, of course, you find the other essential



elements already discussed.

The government also relies to show that the drugs were imported not only on the statutory presumption just explained, but also on circumstantial evidence, such as, for example, that some of the drugs were wrapped in South American newspapers.

Now, the law in this connection recognizes two kinds of possession: actual possession is one, and constructive possession is the other. One who has direct physical control over a thing is said to be in actual possession of that thing; but the fact that one has actual or physical possession of illicit narcotics does not preclude constructive possession by another participant. One who, although not in actual direct physical possession of narcotics exercises or has the power and the intention to exercise dominion and control of the narcotics either directly or through another person, is then in constructive possession of it. Such constructive possession may be found to exist where one has the power to control the disposition of narcotics, to direct its delivery, to assure its delivery, to set the price, to determine the quantity to be sold.

Thus, one who has a working relationship or is sufficiently associated in a venture with those who

1  
2 have physical custody of narcotics so that he is able without  
3 difficulty to cause the drug to be produced and delivered  
4 to a customer may be found to have constructive possession.

5 In general, if one has such a meaningful associa-  
6 tion with another who has physical possession of the heroin  
7 or cocaine, and has such a stake in the venture and its  
8 success that he is able to cause, direct or effect its  
9 delivery to prospective customers, he may be said to have  
10 constructive possession. But a casual facilitator who  
11 merely knows one who possesses or trades in heroin or  
12 cocaine but who does not have a working relationship with  
13 that principal that enables him to assure delivery, lacks  
14 dominion or control over it and may not be said to have  
15 constructive possession. So actual possession, as explained,  
16 or constructive possession, as explained, amount to the  
17 same thing so far as the possession which supports the  
18 inference under the statute.

19 Now, ladies and gentlemen of the jury, the  
20 government relies also on another law, the law of which is  
21 generally called the aiding and abetting law, and that law  
22 reads in relevant part as follows:

5  
23 "Whoever commits an offense against the United  
24 States or aids, abets, counsels, commands, induces  
25 or procures its commission, is punishable as a



principal."

This means that not only is the person who commits an illegal act, a person usually called a principal, guilty, but anyone who aids or abets in the commission of the act is likewise guilty of committing that illegal act.

In order to find that the defendant aided or abetted another to commit the offenses charged in this indictment, you must find that the defendant, Daly, in some way associated himself with the criminal venture, that he participated in it, as something he wished to bring about; that he by his act or acts endeavored to make it succeed.

Now, ladies and gentlemen of the jury, it is something of a strain to listen to legal instructions too long in succession. Suppose we take just a few minutes' recess and then I will complete my instructions.

You may retire to the juryroom.

(Brief recess.)

(Charge continued.)

Now, Madam Foreman, Ladies and Gentlemen of the Jury, you have heard or may hear reference sometimes to direct evidence and to circumstantial evidence, and it may be well to explain the difference between these two types of evidence.

Direct evidence is where a witness testifies to

1 1p  
2 what he or she saw, heard, observed; what he or she knows of  
3 his or her own knowledge, something which comes by virtue  
4 of the senses.

5 Circumstantial evidence is evidence of facts  
6 and circumstances from which one may infer connected facts  
7 which reasonably follow in the common experience of man-  
8 kind. Stated somewhat differently, circumstantial evi-  
9 dence is that evidence which tends to prove a disputed fact  
10 by proof of other facts which have a logical tendency to  
11 lead the mind to a conclusion that those facts exist which  
12 are sought to be established.

13 Circumstantial evidence, if believed, is of no  
14 less value than direct evidence, for in either case you must  
15 be satisfied beyond a reasonable doubt of the guilt of the  
16 defendant.

17 Now let us take one simple example which is often  
18 used in this building to illustrate what is meant by circum-  
19 stantial evidence: you recall in the old story of Robinson  
20 Crusoe how one day Crusoe saw footprints in the sand on a  
21 beach. He did not see a man walking on the beach, but  
22 he immediately drew an inference from the fact of the  
23 footprints that a man had, in fact, been walking on the  
24 beach. That is about all there is to circumstantial  
25 evidence. You infer on the basis of reason and experience



from an established fact the existence of some further fact.

Now we should say a few words about the credibility of witnesses, because an important part of your decision will be a decision as to the credibility of witnesses.

How do you determine whether witnesses are telling the truth? We usually say that ordinary common sense leads the way. As practical men and women you draw on your experience in dealing and meeting with people in your everyday business and social life. You may take into consideration conflicts with the testimony of other witnesses, contradictions as to material matters, omissions, conflict with prior testimony such as that perhaps before a grand jury.

The degree of credit to be given to a witness should be determined by demeanor here on the witness stand, relationship to the controversy, relationship to the parties, bias or impartiality, reasonableness of the statements, strength or weakness of recollection - all viewed in the light of other testimony and the attendant circumstances of the case.

You can consider whether any witness has any interest in the case, and, if so, whether that affects his credibility.

1  
2 You heard the testimony of the witnesses. How  
3 did each impress you? You take each one, and on the basis  
4 of your experience you determine whether or not you believe  
5 them and to what extent you believe them.

6 If you find that any witness has wilfully testi-  
7 fied falsely as to any material matter, you may reject the  
8 entire testimony of that witness or you may accept such  
9 part as you believe or as you may find corroborated by  
10 other evidence in the case.

11 Now the law permits but does not require a defend-  
12 ant to testify in his own behalf. The defendant Daly has  
13 taken the witness stand and has testified. Obviously,  
14 a defendant has a deep interest, a deep personal interest  
15 in the result of his prosecution. In fact, it seems clear  
16 he has the greatest interest of all. Interest creates a  
17 motive for false testimony. The greater the interest,  
18 the stronger the motive, and the interest of a defendant  
19 in the result of his trial is of a character possessed by  
20 no other witness.

21 In appraising the credibility of the defendant  
22 you may take the fact of interest into consideration.  
23 However, it by no means follows that simply because a person  
24 has a vital interest in the result he is not capable of  
25 giving a straightforward or truthful account of events.



1  
2 It is for you to decide to what extent, if at all, his  
3 interest has affected or colored his testimony.

4 The intentional flight of a defendant after the  
5 commission of a crime, or after he is accused of a crime,  
6 or after he knows that he is wanted by the authorities  
7 for questioning, or after he knows that the authorities  
8 are investigating, flight under such circumstances does not  
9 itself create a presumption of guilt but it is a fact which,  
10 if proved, may be considered by the jury in the light of  
11 all other evidence in the case in determining guilt or  
12 innocence.

6 13 Evidence of flight was admitted here for your  
14 consideration, and your consideration of the evidence of  
15 flight should center on whether it showed consciousness of  
16 guilt and, if so, this evidence of the guilt of the defendant,  
17 Mr. Daly.

18 In considering the evidence of flight you should  
19 also consider that there might be reasons for flight con-  
20 sistent with innocence. It may be that a feeling of guilt  
21 does not necessarily reflect actual guilt. These are  
22 matters for your consideration when you consider the  
23 evidence of flight of the defendant.

24 Whether or not evidence of flight shows a con-  
25 sciousness of guilt and the significance to be attached

1  
2 to any such evidence are matters exclusively within the  
3 province of the jury, and the jury should bear in mind, of  
4 course, that the burden or duty in a criminal case is not  
5 on the defendant to call any witnesses or to produce any  
6 evidence.

7 Now, members of the jury, the government has call-  
8 ed as witnesses a number of persons who admitted their in-  
9 volvement in matters forming the basis of one or more  
10 charges in this indictment. You may find that Boutureira,  
11 Ramos, Aguiluz and perhaps others are in this category,  
12 and, if so, they may be considered to have been accomplices  
13 in one or more of the defenses charged against the defendant  
14 Daly here on trial.

15 In the detection and prosecution of crime the  
16 government, of necessity, is frequently compelled to rely  
17 on the testimony of accomplices. Often it has no choice  
18 in the matter. The government must take the witnesses

19 to the transactions as they are. An accomplice does  
20 not become incompetent as a witness because of participation  
21 in the criminal act charged. If accomplices could not be  
22 used in many instances it would be difficult to detect and  
23 prosecute wrongdoers. Frequently it happens that only  
24 those who participate have evidence which is relevant and  
25 important if a prosecution is to succeed.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

There is no requirement in a federal court that the testimony of an accomplice be corroborated. A conviction may rest upon the uncorroborated testimony of an accomplice if you find it credible and believable. If you find that any government witness was an accomplice this may be considered by you as bearing upon his credibility. However, it does not follow that because a person has acknowledged participation in a crime or is an accomplice that he is not capable of giving a truthful version of what occurred. His testimony should be viewed with great caution, however, and scrutinized carefully. You will consider, for example, whether the testimony of an accomplice was inspired by any motive of self-interest, personal advantage or hostility to a defendant so that he gave false or colored testimony against him. Or you may consider whether these accomplice witnesses bared themselves publicly before you, made a clean breast of their wrongdoing and told the truth. In short, did they decide after being caught to come clean and tell the truth?

If you find that the testimony of any of these accomplices was deliberately untruthful, you should reject it. On the other hand, if you, upon a cautious and careful consideration are satisfied that these witnesses have given a truthful version and that the government has sustained

1  
2 its burden of proof in all other respects, then you have  
3 sufficient proof on which to bring in a verdict of guilty.

4 Now, Madam Foreman, Members of the Jury, we  
5 have at long last reached the conclusion.

6 I want to say that each of you jurors is entitled  
7 to his or her own opinion. You should, however, exchange  
8 views amongst yourselves, each with his or her fellow  
9 jurors. That is the very purpose of jury deliberation,  
10 to consider and discuss the evidence, to listen to the  
11 arguments of fellow jurors, to present your own views, to  
12 consult with one another, and to reach an agreement based  
13 solely and wholly on the evidence if you can do so without  
14 violence to your own individual judgment.

15 Each one must decide the case for himself or  
16 herself after consideration with your fellow jurors of the  
17 evidence in the case, but you should not hesitate to change  
18 an opinion which, after discussion with your fellow jurors  
19 appears to be mistaken in the light of the discussion viewed  
20 against the evidence and the law.

21 However, if after carefully considering all the  
22 evidence you entertain a conscientious view which differs  
23 from the others you are not to yield your conviction simply  
24 because you are outnumbered or outweighed. Your final vote  
25 must reflect your conscientious conviction as to how the



1  
2 issue should be decided.

3 Any verdict, ladies and gentlemen, must be un-  
4 animous. That is, on each count the verdict must be  
5 unanimous.

6 The jury must not consider or in any way  
7 speculate about the punishment which the defendant might  
8 receive if he is found guilty. Under your oath as  
9 jurors you cannot allow a consideration of the punishment  
10 which may be imposed on a defendant if he is convicted to  
11 influence your verdict in any way or in any sense to enter  
12 into your deliberations. The function of a jury is to  
13 determine whether a defendant is guilty or not guilty on  
14 the basis of the evidence and on instructions as to the law.  
15 It is the Court, the Judge, alone, who has the duty of  
16 determining the sentence if there is a conviction.

17 The charges here are most serious. The just  
18 determination of this case is important to the public.  
19 It is equally important to this defendant. Under your  
20 oath as jurors you must decide this case without fear or  
21 favor and solely on the evidence and the applicable law.

22 If the government has failed to carry its  
23 burden as to any count or counts your sworn duty is to  
24 bring in a verdict of not guilty on such count or counts.  
25 If the government has carried its burden as to any count

lp

or counts, you must not flinch from your sworn duty but you must bring in a verdict of guilty on such count or counts.

The guilt or innocence of the defendant is for you, and you alone, to determine. The government, to prevail, must prove the essential elements as I explained them by the required degree of proof. If it succeeds, your verdict must be guilty; if it fails, your verdict must be not guilty.

In order to assist you in your deliberations, especially in your separate consideration of each count, I am giving to Madam Foreman a copy of the relevant counts of the indictment. You will bear in mind, of course, that the indictment is only an accusation. It is not evidence and it is being given to you solely for the reasons stated.

Now, I am also giving to Madam Foreman a form to be used simply as a guide for returning your verdict on each count. This form is not to be signed. It is only for your convenient use. Your verdict will be returned orally by Madam Foreman in open court, and it goes without saying that this form of memorandum is not intended to and should not in any way influence your verdict.

If during your deliberations you wish to see any of the exhibits, Madam Foreman should send a note through the marshal and we will send in the requested exhibits to



you.

As I may have mentioned before, if you wish any testimony read to you, likewise send a note through the marshal. Your request will be considered, and, if granted, arrangements will be made.

Now, we come to that part of the trial when we must excuse our alternate jurors, Miss Snodgrass and Mr. Rubinstein. We excuse you with the thanks of the Court. You understand that you have served an insurance function essential and important just as if you were a member of the jury which deliberates. You understand that if during a trial one of the members of the jury for any reason is incapacitated and must be excused, if we did not have alternate jurors available we would simply have to stop the trial and start all over again, with the expenditure of time and effort entailed. Therefore we have alternate jurors, and your services were valuable and important, and we will excuse you now and ask you to take your things from the jury-room so that you will be removed when the jury retires to deliberate.

Thank you very much.

(Alternate jurors excused.)

THE COURT: Now, please, ladies and gentlemen of the jury, would you be good enough to remain patiently

1 lp

2 seated in the jurybox in silence for a few minutes while I  
3 see counsel with the reporter at the side bar for any last  
4 problems of law.

5 (At the side bar.)

6 THE COURT: Mr. Jaffe?

7 MR. JAFFE: I have no exceptions, your Honor.

8 THE COURT: Mr. Herwitz?

9 MR. HERWITZ: My only question, your Honor, is  
10 with respect to your charge as to flight in which your Honor  
11 gave the general rules relative thereto as to consciousness  
12 of guilt. The question in my mind is whether your Honor  
13 made it sufficiently clear that the flight must be from the  
14 particular offense with which the defendant is charged, and  
15 the consciousness of guilt must be with respect to the  
16 particular offenses with which the defendant is charged.

17 THE COURT: I am afraid I don't want to give any  
18 further instruction on that subject, Mr. Herwitz.

19 Anything else?

20 MR. HERWITZ: I respectfully except, your Honor.

21 THE COURT: Of course.

22 MR. HERWITZ: Nothing else, your Honor.

23 THE COURT: Thank you.

24 (End of side bar discussion.)

25 THE COURT: Now, Mr. Clerk, will you swear the



COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,  
~~XXXXXX~~  
Plaintiff- Appellee,

- against -

PETER DALY,  
Defendant- Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK


ss.:

I, Reuben A. Shearer, being duly sworn,  
depone and say that deponent is not a party to the action, is over 18 years of age and resides at  
211 West 144th Street, New York, New York 10030

That on the 18th day of May 19 76<sup>at</sup> ~~Rx~~ One St. Andrews Plaza, New York New York  
deponent served the annexed Appendix upon

Robert B. Fiske Jr. Us. Attorney for the Southern District  
the Attorney in this action by delivering a true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the herein.

Sworn to before me, this 19th  
day of May 19 76

  
Reuben Shearer

ROBERT T. BRIN  
NOTARY U.S.C. State of New York  
No. 31 0418950  
Qualified in New York County  
Commission Expires March 30, 1977